

April 17. 1748

St. Brit. Court of common pleas
THE

Practical Register ^C

OF THE

Common Pleas,

CONTAINING

Select Cases or Determinations in
Points of PRACTICE of that Court ;

In the Reigns of

Queen ANNE and King GEORGE the First,
and of his present Majesty King GEORGE
the Second.

With Three Tables ;

One of the PRINCIPAL MATTERS, one of the
GENERAL HEADS therein contained ; and the
other of the NAMES of the CASES.

In the SAVOY :

Printed by HENRY LINTOT (Assignee of Edw. Sayer, Esq;) for J. Stagg, in Westminster-Hall, D. Browne, without Temple-Bar, J. Shuckburgh, in Fleetstreet, J. Mozrall, at the Dove in Bell-yard near Lincoln's Inn, J. Millar, in the Strand, and G. Hawkins, in Fleetstreet.

MDCCLXIII.

UK
505
GRE

1x
P895x

THE
Medical Register

OF THE
Commonwealth

OF THE
State of Massachusetts

In the Register of

Rec. Oct. 16, 1878

A

T A B L E

O F

The Names of the Cases.

A.	
A Cherley <i>and</i> Biddleston,	Page 286
— Adey <i>and</i> Flanagan,	83
Adkin <i>against</i> Worthington,	35
Aislabe <i>and</i> Craven,	294
Albany <i>and</i> Griffen,	306
Alder <i>and</i> Hayward,	12
Alderton <i>and</i> Warden,	71
Aldridge <i>against</i> Wood,	7
Allen <i>and</i> Dixon,	257
— <i>and</i> Grice,	442
— <i>and</i> Heathfield,	311
— <i>against</i> Maxey,	6
Almond <i>and</i> Squire,	446
Alsop <i>against</i> Bagot,	345, 346
— <i>and</i> Hankey <i>and</i> Charlton,	148
Ambrose <i>and</i> Huckley,	87
Anderton <i>and</i> Craven,	294
— <i>against</i> Moreton,	145
— <i>and</i> Smith,	342
Andrews <i>and</i> Oley,	307
a	Ano-

A Table of the Names of the Cases.

Anonymous, Page	35, 46, 140, 145, 146, 171, 215, 241, 263, 265, 279, 282, 303, 340, 358, 371, 375, 382, 386, 404
Appleyard and Gulliver,	169
Arden and Lamley,	192
Arne against Neeler,	381
Arnold against Thomson,	108
Ashburn and Simpson,	78
Ashendon Hundred and Parks,	115
Ashley against Sutton,	335
Ask and Grove,	258
Atkins against Spence,	115
Atkinson and Davie,	19
——— and Welpdale,	308
Atwood against Kennedy,	428
——— against Meredith,	349
Avery and Harding,	186
Austin against King,	337
Ayscough against Strangeways,	159
Backhouse and Kirwood, Lessee of Brace,	165
Bacon and Wyat,	127
Bagot and Allop,	345, 346
Baker and Cockayne,	440
Baker and Newel,	16
Baker's Lessee against Tipping,	166
Baldock and Braty,	135
Baldwin against O'Carrol,	326
Ball against Young,	425
Bambridge and Holtenville,	308
——— and Huggins,	50, 51
Bangs against Bangs,	116
Banniere and Orpwood,	70
Barcleys and Williams,	16
Barnes and Porter,	125
Barret and Davenhill,	298
Bar-	

A Table of the Names of the Cases.

Barrington and Sheppard,	Page 86
Barry and Maurice,	29
Bartholomew against Goulding,	121
Bartlet and Bastard,	229
Basset against Ebdon,	283
Bastard against Bartlet,	229
Bate against Tipping,	166
Bates and Byrom,	114
Bath and Wells Bishop and Bond and Gibbon,	237
Bayly against Dennis,	123
Baynes against Lutwidge,	316
Beach against Smith,	343
Bean and Turner,	221
Beck against Monkman,	100
— against Timbrel,	46
Bell and Greame,	18
— and Zouch,	448
Bellamy against Herring,	153
Belshaw against Porter,	291, 422
Benn, Lessee of Mortimer, against Denn,	175
Bennet against Simson,	436
— and Willis,	410, 432
Bennington and Goodtitle,	179
Beriffe and Pigot,	71
Berry against Bourk,	182
Berryman against Gilbert,	209
Betts's Lessee against Barcleys,	16
— — against Hall,	172
Bevan against Jones,	214
Biddleston against Acherley.	286
Bilson against Smith,	59
Birbeck against Hughes,	165
Birch against Daff,	107
— against Fryer,	3
Bird and Spinks,	184
	Bishop

A Table of the Names of the Cases.

Bishop of Bath and Wells and Bond and Gibbon,	Page 237
Bishop of Carlisle, University of Cambridge, Law, Gibbon and King,	359
Bishop of Hereford and Croft,	356
Bishop and Dorrel,	338
——— and Steward,	84
Blackhall against Gould,	441
Blackstock against Payne,	425
Bland against Featherstone,	226
Blaxland against Burgis,	301
——— and Gouthouse,	426
——— and Taylor,	370
Blazey against Cross,	9
Blick and Halfpen,	65
Bloomfield against Shortridge,	179
Blunt and Goswel,	77
Body and Jones,	312
Bolton and Clarke,	309
Bond and the Bishop of Bath and Wells and Gibbon,	237
Bond against Jacobs,	212
Booth and Bray,	239
Bosanquet against Rundo,	33
Boswell and King,	328
Bourk and Berry,	182
Bourne against Butler,	309
Bowler and Owens,	59
Bowles against Wheeler,	261
Bownus and Turner,	132
Boyce against Hall,	212
——— against Twist,	396
Boyle and Gorman,	388
Box against Reed,	430
Brace's Lessee against Backhouse,	165
Bracher against Cotton,	103
Bradley	

A Table of the Names of the Cases.

Bradley <i>against</i> Lazenby,	Page 289
Braty <i>against</i> Baldock,	135
Bray <i>against</i> Booth,	239
Bredon <i>against</i> Hope,	147
——— <i>and</i> Hale,	130
Brewer <i>against</i> Gee,	311
Bristow <i>against</i> Wrath,	31
Britton <i>against</i> Dickenson,	104
——— <i>against</i> Gibson,	52
Broadfield <i>and</i> Pool,	378
Broadmead <i>against</i> Star,	5
Brockhurst <i>against</i> Copson,	408
Brome <i>against</i> Woodward,	284
Brooke <i>and</i> Stephenson,	435
Brown <i>against</i> Hamond,	25
——— <i>against</i> Hollyoake,	267
——— <i>and</i> Ibbotson,	110
——— <i>and</i> Reed,	280
——— <i>and</i> The Earl of Stamford,	417
Browning <i>against</i> Hodgis,	298
Buckby <i>and</i> Cumption,	427
Buckley <i>and</i> Lord Griffen,	417
——— <i>against</i> Warren,	317
Bucksom <i>against</i> Pellow,	269, 391
Bud <i>against</i> Champion,	276
——— <i>against</i> Milward,	404
Bull <i>and</i> Worley,	351
Bunn <i>against</i> Lucas,	313
Burdon <i>and</i> Mason,	91
Burgess <i>against</i> Nightingale,	450
——— <i>against</i> Pallamounter,	262
Burgis <i>and</i> Blaxland,	301
Burnet <i>against</i> Kendal,	3
Burton <i>and</i> Newby,	424
——— <i>and</i> Thomson,	43
a 3	Batler

A Table of the Names of the Cases.

Butler and Bourne,	Page 309
——— against Houghton,	154
——— against Johnson	444
Butterworth and Newman,	82
Byas and Goodflesh against Lyel	385
Byers against Whitaker,	344
Byrom against Bates,	114
Calverac against Pinheroe,	88, 156
Calvert against Goddard,	332
Cambden's Lessee against Wrangham,	168
Cambridge University and King,	359
Camp against Gale,	238
Cane and Hayne,	352
Canter against Jocham,	31
Capel and Hann,	214
Carlisle Bishop and King,	359
Carpenter against Joynes,	21, 45
Carrol and Baldwin,	327
Carter and Marsh,	37
——— and Pleydel,	284
——— and Uppington,	401
Caruthers against Lamb,	108
Carwil against Manby,	271
Cals against Iveson,	249
Caswel, Knt. and Cornwall, Bart.	318
Catmur and Hadderweek,	63
Cawsey and Yer,	271
Chamberlayne and Sellon,	400
Chambers's Lessee against Ferris,	162
Champion against Budd,	276
——— against Townsend,	72
Chandler and Newman,	310
Chaplin against Chaplin,	160
Chapman and Geale,	265, 391
——— and Herne,	287
	Chap-

A Table of the Names of the Cases.

Chapman <i>against</i> Wish,	Page 92
Charlewood <i>and</i> Pigot,	41
Charlton <i>against</i> Hankey <i>and</i> Alfop,	148
Chatterton <i>against</i> Sket,	13
Cheshire <i>against</i> Teale,	80
Chivers <i>against</i> Miller,	188
Chorke <i>and</i> Ellis,	426
Christophory <i>against</i> Otto,	149
Church <i>against</i> Fendal,	315
—— <i>against</i> Jason, Bart.	322
—— <i>and</i> Wheatley,	113
Clarke <i>against</i> Bolton,	309
—— <i>against</i> Godfrey,	36
—— <i>against</i> Taylor,	38
—— <i>against</i> Venner,	333
Claypham <i>and</i> Simpson,	348
Clayton <i>against</i> Stapp,	334
Cleaver <i>and</i> Grimes,	242
Coates <i>against</i> Hammond,	392
Cock <i>and</i> Lincoln,	233
Cockayne <i>against</i> Baker,	440
Colclough <i>and</i> Ward,	417
Cole <i>and</i> Dursey,	314
—— <i>and</i> Gibson,	311
—— <i>and</i> Gowing,	421
Colebatch <i>against</i> Machan,	256
Collier <i>and</i> Roe, Lessee of Humphreys,	181
Collins <i>against</i> Griffen,	41
—— <i>against</i> Shapland,	351
Collison <i>and</i> Nicholson,	387
Compton <i>against</i> Leeds,	376
Comyns <i>and</i> The King,	374
Condy <i>and</i> Harvey,	216
Conning <i>and</i> Magrath,	15
Constet <i>and</i> Warren,	306
Cooke <i>and</i> Frampton,	253
—— <i>and</i> Hargrave,	278

A Table of the Names of the Cases.

Cooke <i>against</i> Holgate,	Page 260
—— and Ibbotson,	123
—— <i>against</i> Sankey,	64
—— <i>against</i> Shone,	20
Cookson <i>against</i> Monkhouse,	44
Cooper <i>against</i> Levy,	329
—— <i>against</i> Middleton,	16
—— <i>against</i> Old,	208
—— <i>against</i> Sawyer,	42
Copley <i>against</i> Delaney,	379
Coppendal <i>against</i> Sunderland,	244
Copson <i>against</i> Brockhurst,	408
Cordwell and Watson,	136
Cornet and Wals	438
Cornish and Ellison,	227
Cornwall, Bart. <i>against</i> Caswel, Knt.	318
Cosens and Hetherington,	313
Costa and Misaubin,	238, 312
Costar <i>against</i> Standen,	423
Cotton and Bracher,	103
—— <i>against</i> Horsemanden,	357
—— <i>against</i> Perks,	258
Coulson <i>against</i> Turnbull,	237
Cramborn <i>against</i> Quennel,	195
Cranham and Freeman,	160
Craven <i>against</i> Aislabye,	294
—— <i>against</i> Anderton,	<i>ibid.</i>
—— <i>against</i> Henley,	240, 242
Creek <i>against</i> Pitcairn,	118
Croft and The Bishop of Hereford,	356
Crookhay <i>against</i> Martin,	255
Cross <i>against</i> Blazey,	9
Crossman and Rye,	414
Cruse <i>against</i> Williams,	236
Cumpton and Buckby,	427
Curd <i>against</i> Eastmead,	193
	Cut-

A Table of the Names of the Cases.

Cutcliffe against Standish, Page 354

Daff and Birch,	106
Daking and Thornhill,	213
Daniel and Humphreys,	183
Darby and Hood,	390
Davenhill against Barret,	298
Davie against Atkinson,	19
Davis against Mansell, Bart.	255
—— and Richard,	215
Davison against Reed,	12
Dawson against Garth,	291
Day,	218
—— and Potter,	47
Death and Ottiwell,	292
Deighton against Ellis,	398
Delafield against Jones,	345
De la Fountain against Mings,	4
Delande and Derisley,	83
Delany and Copley,	379
Denn and Benn, Lessee of Mortimer,	175
Denn and Fenn,	161
Denison and Hayward,	438
—— against Law,	428
Dennis and Bayly,	123
Denny and Last,	446
—— against Wiggs	111
Dent against Lambert,	418
Denton and Stoneham,	430,
Derisley against Delande,	83
Dickins against Tallowin,	252
Dickenfon and Britton,	104
Dickman against Hutherd,	44
Dinely Goodere and Whitehead,	387
Dixie, Bart. against Somerfield,	106
Dixon against Allen,	257
Dixon	

A Table of the Names of the Cases.

Dixon <i>against</i> Goodman,	Page 451
— <i>and</i> Herse,	36
— <i>and</i> Wright,	11
Doe <i>and</i> Roe, Lessee of Fitzherbert,	162
—, Lessee of Godfrey <i>against</i> Lushington,	180
— <i>against</i> Roe,	105
Dogget <i>against</i> Hawes,	280
D'Oiley <i>and</i> Lister,	422
Dorrel <i>against</i> Bishop,	338
Dorrington <i>against</i> Rogers,	340
Dever <i>against</i> Robinson,	111
Downes <i>against</i> Nichols,	69, 246
— <i>and</i> Roberts,	399
Drew <i>and</i> Knapton,	252
Ducket <i>and</i> Jackson,	54
Duel <i>against</i> Stow,	406
Dulehunty <i>and</i> Nichols,	49
Dun <i>and</i> Gatcliffe,	47
— <i>against</i> Holditch	310
Duncombe <i>against</i> Motteram —	62
Durrant <i>against</i> Lynes,	154, 323
Dursey <i>against</i> Cole,	314
Dutoure <i>and</i> Ecollier,	39
Earby <i>against</i> Windus,	429
Earl of Ilay <i>and</i> Pryor,	319, 320
Earl of Stamford <i>against</i> Browne,	417
Eastbet <i>and</i> Pinfold,	80
Eastmead <i>and</i> Curd,	193
Ebden <i>and</i> Basset,	283
Ecollier <i>against</i> Dutoure,	39
Edmunds <i>and</i> Usher,	262
Edwards <i>and</i> White,	126
Else, Lucas, <i>and</i> Vanderesk,	86
Elliot <i>against</i> Gambier,	225
Elliot	

A Table of the Names of the Cases.

Elliot and Lane,	Page 131
Ellis against Chorke,	426
— and Deighton,	398
— against Knowles,	173
— against Manwaring,	79
Ellison against Cornish,	227
— and Kirby,	24
Elms against Thomlinson,	439
Elton and Palmer,	79
Elwood against Elwood,	34, 124
Enderup and Jones,	150
Evans and Pitt,	356
Ewer and Grant, Bart.	277
Eyles, Bart. against Smart,	248
Eyre against —	402
— and Fort,	274
Farnham and Morfe,	32
Farrel against Head,	8
Farrettes and Hannot,	194
Faulconbridge's (Lord) Lessee against Knowles,	173
Faulkener and Williams,	437
Fawcet against Strickland,	305
Fawkes against Jay,	440
Featherstone and Bland,	226
Fendal and Church,	315
Fenn against Denn,	161
Ferris and York,	162
Field against Walford,	53
Figg and Harris,	339
— and Warwick,	189
Firebrass, Bart. and The King,	373
Fisher against Tucker,	327
Fitch and Waddington,	54
Fitchet,	

A Table of the Names of the Cases.

<i>Fitchet against Jones,</i>	Page 162
<i>Fitzerbert's Lessee against Doe,</i>	162
<i>Flagel against Van Thienen,</i>	15
<i>Flanders against Nichols,</i>	61
<i>Flanegan against Adey,</i>	83
<i>Fleet Warden and Theedam,</i>	326
<i>Fleetwood and Thornhill Lessee of the Duke and Duchefs of Hamilton,</i>	178
<i>Forrest and Oades,</i>	210
<i>Fort against Eyre,</i>	274
<i>Foster and Lumley,</i>	6
<i>— and Preston,</i>	386
<i>— against Smales,</i>	445
<i>Fowler and Philips,</i>	409
<i>— against Whadcock,</i>	243
<i>Fox and Lewing,</i>	227
<i>Frampton against Cooke,</i>	253
<i>Francia and Joy,</i>	146, 187
<i>Franklin and Savay,</i>	254
<i>Freeman against Cranham,</i>	160
<i>— and Swan,</i>	263
<i>French and Williams,</i>	398
<i>Frost and Hern and Kingdom,</i>	443
<i>Frument and Welland,</i>	419
<i>Fryer and Birch,</i>	3
<i>Fuller and Taylor,</i>	34
<i>Fulthorpe against Moore,</i>	210
<i>Gage against Gough,</i>	434
<i>Gale and Clamp,</i>	238
<i>Gallant against Squire,</i>	429
<i>Galloway and Martindale,</i>	304
<i>Gambier and Elliot,</i>	295
<i>— and Willes,</i>	199
<i>— and Wright,</i>	92
<i>Gardiner and Truby,</i>	403
<i>Gar-</i>	

A Table of the Names of the Cases.

Garland against Spicer,	Page 24
Garnet against Heavised,	52
Garth and Dawson,	291
Gatcliffe against Dunn,	47
Gately and Russel,	66
Gawler and Gibbs,	250
Geale against Chapman,	265, 391
Gee and Brewer,	311
Gibbon against Bond and the Bishop of Bath and Wells,	237
Gibbon and King,	359
Gibbs against Gawler,	250
Gibson against Britton,	52
—— against Cole,	311
Gilbert and Berryman,	209
Girdler, Serjeant at Law, against Matthews,	420
Girdler, Serj. at Law, and Swaine,	380
Gledhill and Paul,	444
Goddard and Calvert,	332
Godfrey and Clarke,	36
Godfrey's Lessee against Lushington,	180
Godfrey against Mathews,	287
Goldsmith and Irwin,	247
Goodall against Moore,	309
Goodere and Whitehead,	387
Goodfellow and Threlkeld,	1
Goodflesh and Byas against Lyel,	385
Goodlad, Lessee of Roundel, against Jef- ferson,	167
Goodman and Dixon,	451
Goodrick and Wingfield,	81
Goodright, Lessee of Hawkey, against Hob- lyn,	393
Goodright, Lessee of Russell, against No- right,	176
Good-	

A Table of the Names of the Cases.

Goodright <i>against</i> Skinner,	Page 206
——— Lessee of Parker, <i>against</i> Thrust-	
out,	173
——— Lessee of Rover, <i>against</i> Vice,	
	172
Goodtitle <i>against</i> Bennington,	179
Gorman <i>against</i> Boyle,	388
Goswell <i>against</i> Blunt,	77
Gostwick <i>against</i> Throgmorton,	402
Gough <i>and</i> Gage,	434
Gould <i>and</i> Blackhall,	441
Goulding <i>and</i> Bartholomew,	121
Gouthouse <i>and</i> Blaxland,	426
Gower (Lord) <i>against</i> Heath,	431
Gowing <i>and</i> Cole,	421
Grace <i>and</i> Wood,	151
Grafton <i>and</i> Reading,	405
Graham <i>and</i> Manghen,	270
Grant (Bart.) <i>against</i> Ewer,	277
Gray <i>against</i> Saunders,	131
Greame <i>against</i> Bell,	18
Greave <i>and</i> Paterfon,	273
Green <i>against</i> Upton,	198
——— <i>against</i> Watkins,	347
Gregory <i>against</i> Gurdon,	81
Grey <i>and</i> Simpson,	377
Grice <i>against</i> Allen,	442
Griffen <i>and</i> Albany,	306
Griffen (Lord) <i>against</i> Buckley,	417
Griffen <i>and</i> Collins,	41
Griffith <i>and</i> Maurice,	381
——— <i>and</i> Ormond,	68
Grimes <i>against</i> Cleaver,	242
Grove <i>against</i> Ask,	258
Grubb <i>and</i> Maule,	40
Gulliver <i>against</i> Appleyard,	169
	Gurdon

A Table of the Names of the Cases.

Gurdon and Gregory,	Page 81
Gwinnet against Proctor,	73
Gwinnet and Skin,	133
Gynes against Stephenfon,	105
Hadderweek against Catmur,	63
Haddock and Osborn,	6
Haine and Kinch,	447
Hale against Breedon,	130
— against Norton,	157
Halfpen and Blick,	65
Hall and Wright Lessee of Betts,	172
— and Boyce,	212
— against Whilby,	343
Halfal, Lessee of Lord Lee, against Wedge- wood,	166
Hamilton's (Duke and Duchess) Lessee against Fleetwood,	178
Hammerley against Mallory,	230
Hammerton and Mackerel,	198
Hammond and Brown,	25
— and Coates,	392
— against Horner,	300
— and Roberts,	338
— and Toms,	14
— against Woolmer,	116
Hampton against Partridge,	277
Hand against Kelley,	339
— against Willet,	144
Hankey and Alsop and Charleton,	148
Hann against Capel,	214
Hannaford against Holman,	134
Hannot against Farrettes,	194
Harding against Avery,	186
— and Stewart,	121
Hargrave against Cooke,	278
Harley	

A Table of the Names of the Cases.

Harley and Harvey,	Page 140
Harlin and Marfergh,	209
Harman against Lane,	19
Harper against Woodhouse,	151
Harris against Figg,	339
— and The King,	437
— and Walker,	439
Harrison and Walthoe,	22
Hartley against Varley,	278
Harvey against Condy,	216
— against Harley,	140
— and Shirley,	141
Hatthews and Girdler, Serj. at Law,	420
Hawes against Dogget,	280
Hawkey's Lessee against Hoblyn,	393
Hayes and Thornton,	118
Hayne against Cane,	352
Hays against Thornton,	196
Hayward against Alder,	12
— against Denison,	438
— and Hook,	158
— and Smith,	415
Head and Farrel,	8
Heale and Lyde,	21
Heath and Lord Gower,	431
Heathfield against Allen,	311
Heavised and Garnet,	52
Heber against King,	128
Heney against Whitehead,	378
Henley and Craven,	240, 242
Henriques & Ux' & Societas Belgica ad Indos Occidentales negotians,	25
Herbert against Shaw,	429
Hereford (Bishop) and Croft,	356
Hergeft and Jones, Lessee of Thomas,	170
Herræ against Chapman,	287
Herne,	

A Table of the Names of the Cases.

Herne, Frost and Kingdom,	Page 443
Herring and Bellamy,	153
Hetherington and Cosens,	313
Hewit against Powel,	218
Heywood and Smith,	382
Hickeringil against Knight,	138
Hickman against Waller,	293
Higgins against Stewart,	275, 396, 442
Hill Lord Hilsborough against Jeffereys,	411
Hill and London,	177
— against Wadley,	427
Hilsborough (Lord) against Jeffereys,	411
Hilton and Walker,	328
Hirse against Dixon,	36
Hoare and Ramsberry,	139
Hobbs against Williams,	216
Hoblyn and Goodright, Lessee of Hawkey,	393
Hodgis and Browning,	298
Hodgson and The King,	43
— and Strickland, Bart.	329
— Lessee of Kender against Mason,	163
Hoff and Smith,	394
Holditch and Dun,	310
Holgate and Cooke,	260
Hollyoake and Brown,	267
Holman and Hannaford,	134
Holmes against Holmes,	413
— against Small,	137
Holtenvile and Bambridge,	308
Hood against Darby,	390
Hooke against Hayward,	158
Hooper against Wood,	315
Hope —	219
Hope and Breedon,	147
Horner and Hammond,	300
b	Horse-

A Table of the Names of the Cases.

Horsemanden and Cotton,	Page 357
Horton and Scarral,	259
Hosey and James,	256
Houghton and Butler,	154
Huckle against Ambrose,	87
Huggins against Bambridge,	50, 51
Hughes and Birbeck,	165
Humfreys's Lessee against Collier,	181
—— against Daniel,	183
Hunt and Scrape,	164
Hustler and Wentworth, Bart.	290
Hutherd and Dickman,	44
Hutchins and Tasker,	141
Hutchinson against Wyat,	275
Jackson against Duckett,	54
—— and Penrice,	416
—— and Ray,	37
—— and Theedam,	26
Jacobs and Bond,	212
James against Hosey,	256
—— and Newbal,	331
Jarrat against Robinson,	312
Jason (Bart.) and Church,	322
Jay and Fawkes,	440
Ibbotson against Brown,	110
—— against Cooke,	123
Jefferson and Goodlad, Lessee of Roundel,	167
Jeffery and Smith,	424
Jefferys and Hill Esq; Lord Hillsborough,	411
Jeffs against Jones,	11
Jemmet against Voyer,	355
Jenkinson against Staples and Spooner,	371
Jenks and Smith,	127
Jenner	

A Table of the Names of the Cases.

Jenner against Oatridge,	Page 346
Ilat & Ux' against Lyfet,	221, 223
Ilay (Earl) and Pryor,	319, 320
Jockham and Canter,	31
Johannet against Lloyd,	341
Johnson and Butler,	444
—— and Mills,	419
—— and Pendock,	174
Jones and Bevan,	214
—— against Body,	312
—— and Delafield,	345
—— and Enderup,	150
—— and Fitchet, Lessee of Parry,	161
—— Lessee of Thomas, against Hergest,	170
—— and Jeffs,	11
—— against Leighton,	50
—— and Maddox,	450
—— against Meriden,	32
—— and Williams,	397
Joy against Francia,	146, 187
Joynes and Carpenter,	21, 45
Irwin against Goldsmith,	247
Iveson and Cas,	249
Juncomb against Love,	351
Kelley and Hand,	339
Kendal and Burnet,	3
Kender's Lessee against Mason,	163
Kennedy and Atwood,	428
Kinch against Haine,	447
The King against Comyns,	374
—— against Firebrase, Bart.	373
—— against Harris,	437
—— against Hodgson,	43
—— at the Prosecution of Southwel	
against Sheer,	40
b 2	The

A Table of the Names of the Cases.

The King <i>against</i> Sleigh,	Page 54
—— <i>against</i> Tyrrel,	375
King ——	219
—— <i>and</i> Austin,	337
—— <i>against</i> Bishop of Carlisle, University of Cambridge, Law and Gibbon,	359
—— <i>against</i> Boswel,	328
—— <i>and</i> Heber,	128
—— <i>against</i> Nichols,	299
Kingdom <i>against</i> Herne and Frost,	443
Kirby <i>against</i> Ellifon,	24
Kirk <i>against</i> Pomfret and Rushby,	231
Kirwood, Lessee of Brace, <i>against</i> Back- house,	165
Knapton <i>against</i> Drew,	252
Knight <i>and</i> Hickeringil,	138
—— <i>against</i> Lazenby,	280
Know <i>against</i> Wychel,	17
Knowles <i>and</i> Ellis, Lessee of Lord Faulcon- bridge,	173
Lagget <i>against</i> Watkins,	441
Lamb <i>and</i> Caruthers,	108
Lambert <i>and</i> Dent,	418
—— <i>and</i> The Mayor and Aldermen of Nottingham,	104
Lamley <i>and</i> Arden,	192
—— <i>against</i> Nichols,	114
Lancaster <i>and</i> Noble,	374
Lane <i>against</i> Elliot,	131
—— <i>and</i> Harman	19
—— <i>against</i> Wilkinson,	250
Langdon <i>against</i> Vinicombe,	102
Langton <i>against</i> Marwood,	207
—— <i>against</i> Tuckwel,	155
	Last

A Table of the Names of the Cases.

Last against Denny,	Page 446
Law, the Bishop of Carlisle, University of Cambridge, Gibbon and King,	359
Law and Denison,	428
Lawrence and Marshal,	314
———— and Wife,	224
Lawress Hundred against Shipman	203
Lawson and Taylor,	125, 281
Laycon and Sutton,	153
Layson and Suttle,	449
Lazenby against Bradley,	289
———— and Knight,	280
Learoid and Spence,	104
Leaver and Swale	388
———— against Whitaker,	235
Lee's (Lord) Lessee against Wedgewood,	166
Leeds and Compton,	376
Leighton and Jones,	50
———— against Leighton,	316
Lemark against Newman,	447
Letgoe, Lessee of Wheeler, against Pit,	408
Levy and Cooper,	329
Lewing and Fox,	227
Lewis, Selby and Price,	377
———— and Prichard,	135
Lin against Smith,	121
Lincoln against Cock,	233
Lingwood and Long,	317, 443
Lister against D'Oiley,	422
Littlehales against Smith,	299
Lloyd and Johanner,	341
Loflin and Stevens,	266
London against Hill,	177
Long against Lingwood,	317, 443
Lord Gower against Heath,	431
b 3	Lord

A Table of the Names of the Cases.

Lord Griffen <i>against</i> Buckley,	Page 417
Lord Hilsborough <i>against</i> Jeffereys,	411
Lord Lee's Lessee <i>against</i> Wedgewood,	166
Love <i>and</i> Juncomb,	351
Low <i>and</i> Olivant,	234
Lucas <i>and</i> Bunn,	313
— <i>against</i> Rudd,	423
—, Elfe <i>and</i> Vanderesk,	86
Lumley <i>against</i> Foster,	6
Lushington <i>and</i> Doe, Lessee of Godfrey,	180
Lutwidge <i>and</i> Baynes,	316
Lyde <i>against</i> Heale,	21
Lyel, Byas <i>and</i> Goodflesh,	385
Lynes <i>and</i> Durrant,	154, 323
Lysset <i>and</i> Ilat,	221, 223
Machan <i>and</i> Colebatch,	256
Mackerel <i>against</i> Hammerton,	198
Maddox <i>against</i> Jones,	450
Magrath <i>against</i> Conning,	15
Makepeace <i>against</i> Stevens,	324
Male <i>against</i> Mitchel,	67
Mallory <i>and</i> Hammersley,	230
Manby <i>and</i> Carvil,	271
Manfield <i>against</i> Richman,	323
Manghen <i>against</i> Graham,	270
Mansel, Bart. <i>and</i> Davis,	255
Manwaring <i>and</i> Ellis,	79
Markham <i>and</i> Wyat,	217
Marfergh <i>against</i> Harlin,	209
Marth <i>against</i> Carter,	37
Marshal <i>against</i> Lawrence,	314
Marshal <i>and</i> Stratford,	399
Martin <i>and</i> Crookhay,	255
Martindale <i>against</i> Galloway,	304
Mar-	

A Table of the Names of the Cases.

Martindale <i>against</i> Shipman,	Page 400
Marwood <i>and</i> Langton,	207
Mason <i>against</i> Burdon,	91
—— <i>and</i> Hodgson, Lessee of Kender,	163
—— <i>against</i> Simonds,	194
Mathews <i>and</i> Godfrey,	287
—— <i>against</i> Partridge,	352
—— <i>and</i> Stone,	288
Mattocks <i>and</i> Parker,	321
Maule <i>against</i> Grubb,	40
Maurice <i>against</i> Barry,	29
—— <i>against</i> Griffith,	381
Maxey <i>and</i> Allen,	6
Medlicot <i>and</i> Richards,	303
Melborne <i>against</i> Prudom,	313
Mercer <i>and</i> Wooller's Lessee <i>against</i> Dee,	168
Meredith <i>and</i> Atwood,	349
Meriden <i>and</i> Jones,	32
Middleton <i>and</i> Cooper,	16
Millet <i>and</i> Chivers,	188
Mills <i>against</i> Johnson,	419
Milward <i>and</i> Budd,	404
Mings <i>and</i> De la Fountain,	4
Misfaubin <i>and</i> Costa,	238, 312
Mitchel <i>and</i> Male,	67
—— <i>against</i> Wharton,	60
Monkhouse <i>and</i> Cookson.	44
Monkman <i>and</i> Beck,	100
Moon <i>against</i> Moon,	269
Moore <i>and</i> Fulthorpe,	210
—— <i>and</i> Goodall,	309
Moreton <i>and</i> Anderton,	145
Morse <i>against</i> Farnham,	32
Mortimer's Lessee <i>against</i> Denn,	175
Motteram <i>and</i> Duncombe,	62
b 4	Moulden,

A Table of the Names of the Cases.

Moulden, Lessee of Cambden, *against* Wrang-
ham, Page 168

Neal's Lessee <i>against</i> Baker,	16
Neeler <i>and</i> Arne,	381
Neeves <i>and</i> Stibbs,	315
Negative <i>and</i> Positive, Lessee of Parsons,	169
Neven <i>and</i> Sibson,	225
Newbal <i>against</i> James,	331
Newberry <i>against</i> Strudwick,	228
Newby <i>against</i> Burton,	424
Newel, Lessee of Neal, <i>against</i> Baker,	16
Newman <i>against</i> Butterworth,	82
———— <i>against</i> Chandler,	310
———— <i>and</i> Lemark,	447
Nichols <i>and</i> Downes,	69, 246
———— <i>against</i> Dulehunty,	49
———— <i>and</i> Flanders,	61
———— <i>and</i> King,	299
———— <i>and</i> Lamley,	114
———— <i>and</i> Truby,	403
———— <i>and</i> West,	321
———— <i>against</i> Wilder,	60
Nicholson <i>against</i> Collison,	387
Nightingale <i>and</i> Burges,	450
Nipson <i>against</i> Quitter,	197
Noble <i>against</i> Lancaster,	374
Noright <i>and</i> Goodright, Lessee of Ruffel,	176
Norton <i>and</i> Hale,	157
Not <i>against</i> Stevens,	68
Nottingham Mayor <i>and</i> Aldermen <i>against</i> Lambert,	104

Oades

A Table of the Names of the Cases.

Oades <i>against</i> Forrest,	Page 210
Oatridge <i>and</i> Jenner,	346
O'Carrol <i>and</i> Baldwin,	326
Old <i>and</i> Cooper,	208
Olerenshaw <i>against</i> Stampforth,	197
Oley <i>against</i> Andrews,	307
Olivant <i>against</i> Low,	234
Ormond <i>against</i> Griffith,	68
Orpwood <i>against</i> Banniere,	70
Osborn <i>against</i> Haddock,	6
Ottiwel <i>against</i> Death,	292
Otto <i>and</i> Christophory,	149
Owens <i>and</i> Bowler,	59
Packer <i>and</i> Walter,	495
Pallamounter <i>and</i> Burgefs,	262
Palmer <i>against</i> Elton,	79
—— <i>and</i> Wilson,	4
Panchand <i>against</i> Woolley,	353
Parker <i>against</i> Mattocks,	321
Parker's Lessee <i>against</i> Thrustout,	175
Parks <i>against</i> The Hundred of Ashendon,	115
Parr <i>against</i> Seame,	248
Parret <i>and</i> Smith,	234
Parry's Lessee <i>against</i> Jones,	161
Parson <i>against</i> Whitley,	26
Parson's Lessee <i>against</i> Negative,	169
Parsons <i>against</i> Smith,	131
Partridge <i>and</i> Hampton,	277
—— <i>and</i> Mathews,	352
Paterfon <i>against</i> Greave,	273
Paul <i>against</i> Gledhill,	444
Payne <i>and</i> Blackstock,	425
Peach <i>against</i> Wadland,	274
Peard	

A Table of the Names of the Cases.

Peard <i>against</i> Spinks,	Page 316
Pellow <i>and</i> Buckfom Lessee of Pellow,	269,
	391
Pells <i>against</i> Thomson,	100
Pendock <i>against</i> Johnson,	174
Penrice <i>against</i> Jackson,	416
Perks <i>and</i> Cotton,	258
Perry <i>against</i> Tomkin,	5
Peter <i>against</i> Reginer,	206
— <i>against</i> Remer,	342
Philips <i>against</i> Fowler,	409
— <i>and</i> Robinson,	445
Pigot <i>and</i> Beriffe,	71
— <i>against</i> Charlewood,	41
Pindar <i>against</i> Saunderfson,	272
Pinfold <i>against</i> Eastbet,	80
Pinhero <i>and</i> Calverac,	88, 156
Pit <i>against</i> Evans,	357
— <i>and</i> Letgoe Lessee of Wheeler,	408
Pitcairn <i>and</i> Creek,	118
Pletwood <i>and</i> Turty,	325
Pleydel <i>against</i> Carter,	284
Pomeroy, White <i>and</i> Thomlinson,	109
Pomfret, Rushby <i>and</i> Kirk,	231
Pool <i>against</i> Broadfield,	378
Porter <i>against</i> Barnes,	125
— <i>and</i> Belshaw,	291, 422
Positive Lessee of Parsons <i>against</i> Negative,	169
Pots <i>against</i> Voyce,	272
Potter <i>against</i> Day,	47
Poulter <i>against</i> Skynner,	129
Powell <i>and</i> Hewit,	218
— <i>and</i> Roundle,	244
Powey <i>against</i> Walker,	393
Preston <i>against</i> Foster,	386
	Price

A Table of the Names of the Cases.

Price, Selby and Lewis,	Page 377
— and Whitehead,	245
Prichard against Lewis,	135
Procter and Gwinnel,	73
— and Tidmarsh,	336
Prudom and Melborne,	313
Pryor against The Earl of Ilay,	319, 320
Pulleine and Upton,	282
Pyot and Talbot,	411
Quennel and Cramborn,	195
Quitter and Nipson,	197
Ramsberry against Hoare,	139
Randal and Smith,	85
Rand and Thomson,	426
Randolph against Reginder,	357
Rathbone against Stedman,	251
Ray against Jackson,	37
Reading against Grafton,	405
Reed and Box,	430
— against Brown,	280
— and Davison,	12
Reginder and Randolph,	357
Reginer and Peter,	206
Remer and Peter,	342
Revel against Snowden,	56
Reynolds against Simonds,	410
Rice against Vinal,	417
Richard against Davis,	215
Richards against Medlicot,	303
Richardson and Smith,	383
Richman and Manfield,	323
Robe against Smith,	182
Roberts against Downes,	399
— against Hammond,	338
Roberts	

A Table of the Names of the Cases.

Roberts and Shingler,	Page 106
Robins and Wrecke and his Wife,	142
Robinson and Dover,	111
——— and Jarrat,	312
——— against Philips,	445
——— against Simonds,	302
Roe and Doe,	105
—— Lessee of Humphreys against Collier,	181
—— Lessee of Fitzherbert against Doe,	162
—— and Smith,	2
Rogers and Dorrington,	340
Rose and Wrath,	152
Rover's Lessee against Vice,	172
Roundel's Lessee against Jefferson,	167
Roundle against Powel,	244
Rudd and Lucas,	423
Rundo and Bosanquet,	33
Rushby and Pomsfret and Kirk,	231
Russel and Gately,	66
Russel's Lessee against Noright,	176
Ryder against Somerfield,	230
Rye against Crosman,	414
Sampson and Benner,	436
——— against Warren,	330
Sankey and Cooke,	64
Savay against Franklin,	254
Saunders and Gray,	131
Saunderson and Pindar,	272
Sawyer and Cooper,	42
Scarral against Horton,	259
Scrape against Hunt,	164
Seame and Parr,	248
Selby, Price and Lewis,	377
Sellon against Chamberlain,	400
Shapland and Collins,	351
Shaw	

A Table of the Names of the Cases.

Shaw and Herbert,	Page 429
— and Whitehead,	292
Sheer and The King, at the Prosecution of	
Southwell,	40
Sheppard and Barrington,	86
Shingler against Roberts,	106
Shipman and Lawress Hundred,	203
— and Martindale,	400
— against Thomson,	268
Shirly against Harvey,	141
Shone and Cooke,	20
Shortridge and Bloomfield,	179
Shrimpton and Turner,	126
Sibson against Neven,	225
Simonds and Mason,	194
— and Reynolds,	410
— and Robinson,	302
Simpson against Ashburn,	78
— against Claypham,	348
— against Grey,	377
Sket and Chatterton,	13
Skin against Gwinnet,	133
Skinner and Goodright,	206
Skyunner and Poulter,	129
Slaughter against Talbot,	102
Sleigh and The King,	54
Smales and Foster,	445
Small and Holmes,	137
Smart and Eyles, Bart.	248
Smith against Anderton,	342
— and Beach,	343
— and Bilson,	59
— against Heywood,	382, 415
— against Hoff,	394
— and Jefferey,	424
— against Jenks,	127
Smith	

A Table of the Names of the Cases.

Smith and Lin,	Page 121
— <i>and Littlehales,</i>	299
— <i>against Parret,</i>	234
— <i>and Parsons,</i>	131
— <i>against Randal,</i>	85
— <i>against Richardson,</i>	383
— <i>and Robe,</i>	182
— <i>against Roe,</i>	2
— <i>against Smith,</i>	245
— <i>and Tray,</i>	414
— <i>against Wintle,</i>	354
Smithfield and West,	232
Snowden and Revel,	56
Societas Belgica ad Indos Occidentales ne-	
gotians versus Henriques & Ux',	25
Somerfield and Dixie, Bart.	107
— <i>and Ryder,</i>	230
Southwell against Shear,	40
— <i>and Wilson,</i>	304
Spear and Talbot,	412
Spence and Atkins,	115
Spencer against Learoid,	104
Spicer and Garland,	24
Spinks against Bird,	184
— <i>and Peard,</i>	316
Spooner, Staples and Jenkinson,	371
Squire and Almond,	446
— <i>and Gallant,</i>	429
Stafford against Thomson,	395
Stainton against Winch,	449
Stamford (Earl) against Brown,	417
Stampforth and Olerenshaw,	197
Standen and Costar,	423
Standish and Cutliffe,	354
Stanton and Walton,	341
Stap and Clayton,	334
2	Staples,

A Table of the Names of the Cases:

Staples, Spooner and Jenkinson,	Page 371
Star and Broadmead,	5
Stedman and Rathbone,	251
Stephenson against Brooke,	435
——— and Gynes,	105
——— against Thomson,	261
Stevens against Loftin,	266
——— and Makepeace,	324
——— and Not,	68
Steward against Bishop,	84
——— against Harding,	121
——— and Higgins,	275, 396, 442
Stibbs and Neeves,	315
Stockham and Taylor,	290
Stone and Mathew,	288
Stoneham against Denton,	430
Stow and Duel,	406
Strangeways against Aylcough,	159
Stratford against Marshall,	399
Strickland and Fawcet,	305
——— Bart. and Hodgson,	329
Strudwick and Newberry,	228
Sunderland and Coppendall,	244
Sutton and Ashley,	335
Suttle against Layson,	449
Sutton against Laycon,	153
Swaine against Girdler, Serjeant at Law,	380
Swale against Leaver,	388
Swan against Freeman,	263
Swift against Tuckwell,	186
Swyer and Watkinson,	112
Talbot against Pyot,	411
——— and Slaughter,	102
——— against Spear,	412
Tallowin and Dickins,	252
Tasker,	

A Table of the Names of the Cases.

Tasker <i>against</i> Hutchins,	Page 141
Taylor <i>against</i> Blaxland,	370
——— <i>and</i> Clarke,	38
——— <i>against</i> Fuller,	34
——— <i>against</i> Lawson,	125, 281
——— <i>against</i> Stockham,	290
——— <i>and</i> Williams,	305
Teale <i>against</i> Cheshyre,	80
Theedam <i>against</i> Jackson,	26, 301
——— <i>against</i> The Warden of the Fleet,	326
Thomas's Lessee <i>against</i> Hergest,	170
Thomlinson <i>and</i> Elms,	439
——— <i>against</i> White and Pomeroy,	109
Thomson <i>and</i> Arnold,	108
——— <i>against</i> Burton,	43
——— <i>and</i> Pells,	100
——— <i>against</i> Rand,	426
——— <i>and</i> Shipman,	268
——— <i>and</i> Stafford,	393
——— <i>and</i> Stephenson,	261
Thornhill <i>and</i> Daking,	213
——— Lessee of the Duke and Dukes of Hamilton, <i>against</i> Fleetwood,	178
Thornton <i>against</i> Hayes,	118, 196
Threlkeld <i>against</i> Goodfellow,	1
Throgmorton <i>and</i> Gostwick,	402
Thrustout <i>and</i> Goodright,	175
Tidmarsh <i>against</i> Proctor,	336
Tilney <i>and</i> Watson,	379
Timbrel <i>and</i> Beck,	46
Tipping <i>and</i> Bate,	166
Tomkin <i>and</i> Perry,	5
Toms <i>and</i> Hammond,	14
Townsend <i>and</i> Champion,	72
Trahern <i>and</i> Welles,	96
I	Tray

A Table of the Names of the Cases.

Tray and Smith,	Page 414
Truby against Gardiner,	403
——— against Nichols,	403
Tucker and Fisher,	327
Tuckwell and Langton,	155
——— and Smith,	186
Tupper, Lessee of Mercer, and Woollet,	
<i>against Doe,</i>	168
Turnbull and Coulson,	237
Turner against Bean,	221
——— against Bownus,	132
——— against Shrimpton,	126
——— and Williams,	307
Turty and Pletwood,	325
Twist and Boyce,	396
Tyrrel and The King,	375
Vanderesk against Waylet and Elfe,	86
Van Thienen and Flagel,	15
Varley and Hartley,	278
Venner and Clark,	333
Vice and Goodright, Lessee of Rovet,	172
Vinal and Rice,	417
Vinicombe and Langdon,	102
University of Cambridge, Bishop of Carlisle,	
Law, Gibbon and King,	359
Voyce and Pots,	272
Voyer and Jemmet,	355
Uppington and Carter,	401
Upton and Green,	198
——— against Pulleine,	282
Usher against Edmunds,	262
Waddington against Fitch,	54
Wadland and Peach,	274
Wadley	

A Table of the Names of the Cases.

Wadley and Hill,	Page 427
Walford and Field,	53
Walker against Harris,	439
—— against Hilton,	328
—— and Powey,	393
Waller and Hickman,	293
Wallis and Watfon,	418
Walter against Packer,	405
Walthoe against Harrison,	22
Walton against Stanton,	341
Ward against Alderton,	71
—— and Colclough,	417
Warden of the Fleet and Theedam,	326
Warren and Buckley,	317
—— and Confter,	306
—— and Sampfon,	330
Warwick and Figg,	189
Washington and White,	347
Wafs against Cornet,	438
Watkins and Green,	347
—— and Lagget,	441
Watkinfon against Swyer,	112
Watfon against Cordwel,	136
—— and Tilney,	379
—— against Wallis,	418
Waylet, Elfe, Lucas and Vanderesk,	86
Wedgewood and Halsal, Lessee of Lord Lee,	166
Welland against Frument,	419
Weller and Trahern,	96
Welpdale and Atkinson,	308
Wentworth (Bart.) against Hustler,	290
West against Nichols,	321
—— against Smithfield,	232
Weyman against Weyman,	57
Whadcock and Fowler,	243
Wharton	

A Table of the Names of the Cases.

Wharton and Mitchel,	Page 60
Wheatly against Church,	113
Wheeler and Bowles,	260
Wheeler's Lessee against Pit,	408
Whilby and Hall,	345
Whitaker and Byers,	344
——— and Leaver,	235
——— against Whitworth,	375
White against Edwards,	126
White and Pomeroy and Thomlinson,	109
——— against Washington,	347
Whitehead against Dinely Goodere, Bart.	387
——— and Heney,	378
——— against Price,	245
——— against Shaw,	292
Whitley and Parsons,	26
Whitworth and Whitaker,	375
Wiggs and Denny,	111
Wilder and Nichols,	60
Wilkinson and Lane,	250
Willet and Hand,	144
Williams, Lessee of Betts, against Barcleys,	16
Williams and Cruse,	236
——— against Faulkener,	437
——— against French,	398
——— and Hobbs,	216
——— against Jones,	397
——— and Taylor,	305
——— and Turner,	307
Willis against Bennet,	410, 432
——— against Gambier,	199
Wilson against Palmer,	4
——— against Southwell,	304
——— Winch and Stainton,	449
Windus and Earby,	429
Wing-	

A Table of the Names of the Cases.

Wingfield against Goodrick,	Page 81
Wintle and Smith,	354
Wise against Lawrence,	224
Wish and Chapman,	92
Wood and Aldridge,	7
—— against Grace,	151
—— and Hooper,	315
Woodhouse and Harper,	151
Woodward and Brome,	284
Woollet and Mercer's Lessee against Doe,	168
Woolley and Panchand,	353
Woolmer and Hammond,	116
Worley against Bull,	351
Worthington and Adkin,	35
Wrangham and Moulden, Lessee of Cambden,	168
Wrath against Bristow,	31
—— against Rose,	153
Wreeke against Robins,	142
Wright against Dickson,	11
—— against Gambier,	92
—— Lessee of Betts, against Hall,	172
—— and Wye,	264
Wyat against Bacon,	127
—— and Hutchinson,	275
—— against Markham,	217
Wychel and Know,	17
Wye against Wright,	264
Yer against Cawsey,	271
York, Lessee of Chambers, against Ferris,	162
Young and Ball,	425
Zouch against Bell,	448

Abatement.

Threlkeld *against* Goodfellow.
Mich. 6 Geo. II.

Thomson.

J. G.

10 Nov.

DEclaration of *Hilary* Term without any Impar lance. The Defendant delivered a Plea in Abatement four Days within the Term; it was determined and settled by the whole Court, that the Defendant ought to have pleaded within four Days of *Easter* Term, and also should have got a special Impar lance within the four Days. The Chief Justice asked, whether, if the Defendant had pleaded on the first or second Day of the Term without a special

Plea in Abatement of a subsequent Term must be pleaded within the first four Days, and a special Impar lance procured within that Time.

Abatement.

cial Imparlance, and on the third or fourth Day had applied for a special Imparlance, that would have been sufficient? The Prothonotaries said they were obliged to give a special Imparlance in the four Days; and they never asked whether the Defendant had pleaded or not. *Cur'*, it would do. *Judic' Respondeas Ouster. Wynne* for the Defendant; *Baynes* for the Plaintiff.

Smith *against* Roe.
Trin. 7 & 8 Geo. II.

Thomson.

Antient Demesne must be pleaded within the first four Days of the Term.

Ejectment. Declaration of *Easter* Term with Notice to appear in *Trinity* Term generally. Serjeant *Skynner* moved that the Defendant might have Leave to plead Antient Demesne. [Note, The Defendant can't plead this without Leave of the Court, and must produce an Affidavit that the Lands are Antient Demesne.] Rule to shew Cause. *Hawkins* for the Plaintiff insisted, that this Application came too late, and the Plea being a dilatory Plea, ought to have been pleaded within the first four Days of the Term. *Skynner* replied, that by the Notice under the Declaration the Defendant had the whole Term to appear in. *Cur'*, The Defendant ought to

Abatement.

3

to have come in, appeared and pleaded this Plea within the first four Days of the Term, and can't come after; discharge the Rule.

Sir George Cooke quoted two Cases in Point, viz. *Holfast* against *Carlton*, Hil. 1 Geo. 2. *Bingham* against *Bar-ker*, Trin. 2 Geo. 2.

Birch against *Fryer*. East. 8 Geo. I.

THE Defendant on a general Declaration shall plead in Abatement within four Days in Term, although no Rule to plead be given; if upon a special *Capias* within four Days after the Delivery of the Declaration.

Within what Time to plead in Abatement.

Burnet against *Kendal*.

Mich. 12 Geo. II.

Thomson.

Motion to set aside a Plea in Abatement. The Declaration was left at the Country Attorney's Chamber, thrust under the Door, and was not found there till the first Day of *November*, two Days after which the Plea was delivered. Mr. *Buck*, the Agent, had appeared by *King* the Country Attorney, and the Plaintiff had given

Plea in Abatement after the four Days, the Declaration not being well delivered.

Abatement.

no Notice to Mr. *Buck* that a Declaration was filed or left. *Cur'*, Whether the Plea came regularly in or not, is the only Question, and the Declaration not being delivered to the Agent, nor any Notice given him of it's being filed, let the Rule for setting aside the Plea be discharged with Costs, it being tricking Practice to put the Declaration under the Chamber Door of the Country Attorney. *Skinner* for the Defendant; *Umlin* for the Plaintiff.

Wilson *against* Palmer.

Mich. 12 Geo. I.

Plea in Abatement without an Affidavit. Judgment signed.

THE Defendant was sued as Executor, and pleaded in Abatement that there was another Executor, but did not annex an Affidavit of the Truth of his Plea; the Plaintiff signed Judgment; *per Cur'*, the Judgment is regular.

De la Fountain *against* Mings.

Mich. 1 Geo. II.

Cooke.

Plea in Abatement without Affidavit. Judgment signed.

A Plea in Abatement was pleaded without an Affidavit annexed; whereupon the Plaintiff signed Judgment. Held to be a regular Judgment.

Broad-

Abatement:

5

Broadmead and others Executors
against Star. Trin. 5 Geo. II.

INfancy pleaded, and moved *per Bel-* Plea of In-
fancy set aside
because no
Affidavit an-
nexed.
feld, to set aside the Plea, because
there was no Affidavit annexed; the
Court held this to be a dilatory Plea,
and set it aside, *Fortescue dissentient*.
Chapple for the Defendant.

Perry *against* Tomkin.
Trin. 8 & 9 Geo. II.

Cooke.

PLEA in Abatement, the Want The want of
Addition
pleaded in
Abatement
without an
Affidavit.
of Addition of the Defendant's Es-
tate, Degree or Mystery, was deli-
vered without an Affidavit annexed to
verify the Truth of the Plea; where-
upon the Plaintiff signed Judgment.
Serjeant *Hawkins* moved that the Judg-
ment might be set aside, and said that
the Truth of the Plea appeared by the
Declaration, and therefore an Affidavit
was not necessary. Rule to shew
Cause.

Abatement.

Lumley *against* Foster.

Hill. 13 Geo. II.

Affidavit of
the Truth of
a Plea in A-
batement,
made by the
Defendant's
Attorney,
held sufficient.

THE Defendant pleaded in Abate-
ment, and his Attorney swore
to the Truth of the Plea; the Que-
stion was, Whether the Defendant
should not have made the Affidavit?
Cur', Probable Cause is shewn, which
is all that the Statute requires. *Prime*
for the Plaintiff; *Draper* for the Defend.

Allen *against* Maxey.

Mich. 8 Geo. II.

*In the Treasury.**Cooke.*

Plaintiff shall
pay no Costs
on confessing
a Plea in A-
batement.

THE Defendant had pleaded in
Abatement; the Plaintiff con-
fessed the Plea; and the Question
was, Whether the Plaintiff should pay
Costs to the Defendant? Held that
the Plaintiff should pay no Costs.

Osborn *against* Haddock.

Mich. 11 Geo. II.

On a Plea in
Abatement
the Plaintiff

THE Plaintiff brought an Action
in *Michaelmas* Term, to which
may confess the Plea, and enter a *Cassetur breve*, without applying to
the Court or paying Costs.

the

Abatement.

7

the Defendant pleaded in Abatement, whereupon the Plaintiff confessed the Plea, entered a *Cassetur breve* upon the Roll, and brought a new Action, to which the Defendant pleaded the former Action, as a *lis pendens*, in Abatement, the Plaintiff replied the *Cassetur breve*; the Defendant rejoined *multiel Record*, and thereupon Issue was joined.

Serjeant *Agar*, for the Defendant, moved that the *Cassetur breve* might be vacated, for that the Plaintiff ought not to have entered it without Leave of the Court and Payment of Costs. Serjeant *Draper*, for the Plaintiff, said the Plaintiff might enter the *Cassetur breve* without moving the Court for Leave or paying Costs. The Court, on advising with the Prothonotaries, was of Opinion, that the Plaintiff might enter the *Cassetur breve*, without moving the Court for Leave, or paying Costs.

Aldridge *against* Wood.

Trin. 5 Geo. II.

Borret.

THE Plaintiff had declared by the Name of *James*; on the Evidence upon Trial it appeared his Name was *Jacob*; the Chief Justice reserved this Point at the Trial, and

Misnomer must be pleaded in Abatement, can't be taken Advantage of in Arrest of Judgment.

Abatement.

Serjeant *Corbet* moved it in Arrest of Judgment ; but the whole Court declared, that as the Defendant had pleaded in Chief, he was precluded from taking Advantage of the Misnomer in Arrest of Judgment ; he ought to have pleaded it in Abatement. No Rule.

Farrel *against* Head an Attorney.
Trin. 11 & 12 Geo. II.

Thomson.

Attorney fore-
judged sued
by Bill pleads
in Abatement
that he is no
Attorney.

THE Plaintiff filed a Bill against the Defendant ; the Defendant appeared, got a special Impar lance, and pleaded in Abatement, that at the Time of exhibiting the Bill he was not, nor hath he ever since been, nor is he one of the Attornies of the said Court of the Bench here, as by the said Bill is supposed ; and this he is ready to verify, and prays Judgment of the said Bill, and that the same may be quashed, Serjeant *Wright* moved that the Plea might be set aside upon a Certificate from the Clerk of the Warrants, that the Defendant was duly admitted an Attorney on the 26th Day of *November* 1730. Rule to shew Cause. *Dra- per* for the Defendant, it appeared by a Certificate from the Clerk of the War-
rants

Abatement.

9

rants, that the Defendant had been fore-judged five Years ago, and that the Forejudger still remained in force. *Cur'*, Let the Rule be discharged.

Blazey *against* Crofs an Attorney.

Trin. 13 Geo. II.

Borret.

SERJEANT *Cmyus* moved that a Plea of Plea of Infancy by an Attorney, refused to be set aside. Infancy might be set aside, the Defendant being a sworn Attorney and above Age. *Cur'*, (Justice *William Fortescue* absent) He is intitled to the Plea as well as any Body else. No Rule.

Account.

IF the Defendant shall be adjudged to account, then he shall render his Body to the Prison of the *Fleet*, there to account for so much as he shall be adjudged to account for, or else he shall enter into a Recognizance with Sureties, the Condition of which Recognizance is as follows, *viz.* On Judgment quod computet, Defendant shall surrender himself to Prison or enter into Recognizance with Sureties.

That the Defendant shall appear in his own proper Person before the Auditors assigned by the Court, to take his Account at the Office of, &c. (*tali die*) assigned by the said Auditors, and so from Condition of the Recognizance.

from Day to Day and every Day, and at every Place to him assigned by the said Auditors, until the said Account be finished. And also that the Defendant shall appear before the Justices of this Court at the Day when the Auditors shall deliver in the said Account in Court, and so from Day to Day and every Day of Plea until the said Plea therein be determined, and Judgment given therein; and if Judgment therein be given against the Defendant, then the Defendant shall render his Body Prisoner to the Prison of the *Fleet*, there to remain until the Defendant shall satisfy the Plaintiff of the Arrears found upon him, &c.

Proceedings
on a Capias
ad compu-
tand.

Si non est inventus soit return sur capias ad computandum: Ex' fa' issuera, & si defend' appear' rigore juris il doit appear in Prison, Mais la Court, ex gratia, ad use de prendre bail de account devant auditors assign par le court, que sont deux clerks del court, ad audiendum computum, & de appear coram eis de die in diem ad quemlibet diem placiti & loci assign' par les auditors, tanque le account soit determine.
1 Brown 46. Rast. 16. Old Entries published 1646, fo. 125. Brevia Judic' Printed 1662, fo. 72.

Acetiam

Acetiam.

Wright *against* Dickson.

Mich. 6 Geo.

Foley.

A Cetiam in Debt against Bail upon a Recognizance, as good as by *Acetiam in Debt against Bail.*
Præcipe in Debt.

Action.

Jeffs *against* Jones. The same *a-*
gainst the same. East. 7 Geo. II.

Thomson.

THE Plaintiff brought two several Actions *ought not to be joined where there may be several Pleas.* against the Defendant, the one for an Assault and Battery, the other for a Trespass and taking away the Plaintiff's Goods. Serjeant *Hawkins* moved that these two Actions might be joined into one. Rule to shew Cause. Serjeant *Chapple* for the Plaintiff. *Cur'*, As there may be several Pleas the Actions ought not to be joined, the Rule must be discharged.

Amidavit

Affidavit.

Hayward *against* Alder.
Hil. 6 Geo. II.

Thomson.

Affidavit for
Bail made be-
fore the Plain-
tiff's Attor-
ney.

Serjeant *Hawkins* moved that Pro-
ceedings on the Bail-Bond might be
staid on entering a common Appear-
ance in the Original Action, because
the Affidavit for Bail was sworn before
the Plaintiff's Attorney being a Com-
missioner. *Cur'*, Let the Plaintiff shew
Cause. See the Rule, *East*. 13 Geo. II.

Davison *against* Reed.
Trin. 6 & 7 Geo. II.

Thomson.

Affidavit de-
fective, the
Party not say-
ing that he
was the De-
fendant.

THE Defendant moved that the
Plaintiff might reverse the Out-
lawry at his own Costs, because the Pro-
clamation issuing into *Yorkshire*, the De-
fendant was in the Custody of the Sheriff
of *Yorkshire*, before the Return of the
Exigent in *London*. Serjeant *Eyre* for
the Plaintiff, before he contested the Ir-
regularity, objected that *John Reed*,
who made the Affidavit, did not call
himself

himself Defendant in the Cause, and there might be more of the Name; which Objection the Court received, and discharged the Rule for shewing Cause.

Chatterton *against* Sket and his
Wife. Mich. 11 Geo. II.

Cooke.

Serjeant *Hussey* moved that the Fine between the Parties might be amended by the Deed that led the Uses. Rule to shew Cause. *Eyre* shewed Cause, and produced an Affidavit that the Attorney, who made the Application for the Amendment, had taken the Affidavit, upon which the Rule to shew Cause was made. *Hussey* said that could be no Objection, because the Application was not in the common Course, nor in any Cause. *Cur'*, We will abide by the Rule, let the Rule for shewing Cause be discharged. See the Rule, *East*. 13 Geo. II.

Leave to amend a Fine denied, the Affidavit being taken by the Attorney who made the Application.

Ambat.

Ambassador.

Toms *against* Hammond.
Mich. 7 Geo. II.

Thomson.

A Menial Servant to an Ambassador not privileged, a Domestic Servant is.

MOtion that the Defendant might be discharged out of the Custody of the Sheriff of *Middlesex*, he being a Servant to Baron *Hopman*, Resident from the Duke of *Mecklenburgh*. By the Affidavit it was sworn that the Defendant was a Menial or Domestic Servant to the Resident, and in the Resident's Certificate the Defendant was said to be retained as his Clerk or Menial Servant. *Wynne* for the Plaintiff. The Court would not discharge the Defendant, the Statute says Domestic Servant, which must be one who receives Wages and lives with the Foreign Minister, and this Retainer is as a Menial Servant. Stat. 7 Ann. c. 12.

Amendment.

Flagel *against* Van Thienen.

Mich. 6 Geo. II.

Cooke.

DArnel and Eyre Serjeants moved to amend a Recognizance of Bail. The Case was, the Defendant was summoned in Assault, and there was a Judge's Order for Bail, and in taking the Recognizance the Filacer had taken it in Assumpsit, and the Amendment prayed, was to alter it to Assault. Upon hearing Chapple and Baynes, Serjeants, for the Defendant, the Court ordered the Recognizance to be amended. Recognizance of Bail amended from Assumpsit to Assault.

Magrath *against* Conning.

Easter 11 Geo. II.

Cooke.

Serjeant Agar moved that the Bail-piece might be amended by the Instructions for the Writ. Rule to shew Cause. Parker for the Defendant. Rule absolute. Bail-piece amended.

Wil-

Williams, Lessee of Betts, *against*
Barcleys. Mich. 1 Geo. II.

Declaration in
Ejectment a-
mended.

Ejectment. Motion to make two Amendments in the Declaration; first, in the Parcels; secondly, in a Mistake of the Plaintiff's Name for the Defendant's. Granted on Payment of Costs.

Cooper *against* Middleton.
Mich. 2 Geo. II.

Amendment
of Declaration
by adding
new Counts
after Issue
joined, denied.

MOTION to amend Declaration by adding two new Counts denied, because Issue was joined; and the Court said it was never usual to give the Plaintiff Leave to add a new Count after the Defendant had pleaded.

Newel, Lessee of Neal *against*
Baker. Hill. 4 Geo. II.

Amendment
of Declaration
in Ejectment
by altering the
Day of the
Demise, de-
nied after Is-
sue joined.

Serjeant *Skinner* for the Plaintiff, moved to amend a Declaration in Ejectment; the Case was this, the Lessor of the Plaintiff claimed as Heir to Admiral *Hofier*, and had laid the Demise before the Admiral's Death; the first Amendment prayed, was to alter the Day of the Demise; the second

Amendment prayed, was to alter the Term from five to ten Years, in regard, as was said, the Matter was like to bear a long Litigation, and the Term might possibly expire before the Cause could be ended. Upon hearing *Cheshire* for the Defendant, as to the first Amendment the Motion was denied, because Issue was joined, and it was a Declaration of *Trinity* Term; this Amendment being in the Nature of adding a new Count, which cannot be done after two Terms. As to the second Amendment, the Court said, Issue being joined, they would not enlarge the Term without Consent; *Cheshire* declared he had no Authority to consent. No Rule.

Know *against* Wychel and others.
Easter 1 Geo. II.

Serjeant *Branthwayte* for the Plaintiff, moved for Leave to amend the Declaration on Payment of Costs. Rule to shew Cause. Serjeant *Chapple* for the Defendant, the Issue is entered upon the Roll, has been once tried, but the Verdict was set aside. *Cur'*, Let the Rule be absolute for the Amendment on Payment of Costs. Serjeant *Chapple* insisted that the Defendant was intitled to an Imparance

C

until

Declaration amended after Issue joined and Verdict set aside.

When Plaintiff amends his Declaration and pays Costs, Defendant shall not have an Imparance.

until the next Term, and said that an amended Declaration was in the Nature of a new Declaration. Upon this the Court doubting whether the Defendant was not intitled to an Imparance, *Townsend*, Secondary, informed the Court, he apprehended the Practice of the Court was, that when the Plaintiff amended his Declaration and payed Costs, the Defendant should have no Imparance, but must plead after the Rule to plead is out. This the Court took Time to consider of till the next Day, and then, after talking over the Matter in the Treasury, declared that the Defendant should not have an Imparance.

Greame against Bell.

Trin. 10 Geo. II.

Thomson.

Declaration amended by adding new Counts in the second Term.

SErjeant *Wright* moved that the Plaintiff might have Leave to amend his Declaration by adding two new Counts, this being the 2d Term, Rule to shew Cause. *Bootle* for the Defendant. *Cur'*, Let the Rule be absolute on Payment of Costs.

Har-

Harman *against* Lane.

Hill. 13 Geo. II.

EYRE and Wynne shewed Cause a-
 gainst a Rule obtained by the Plaintiff
 for very large Amendments in a Decla-
 ration, after Issue joined and several No-
 tices of Trial given; upon stating the
 Declaration and Amendments, it appear-
 ed that the Amendments tended to make
 a new Cause of Action. The Rule was
 discharged. *Draper* for the Plaintiff,

Amendments
 tending to a
 new Cause of
 Action, pray-
 ed after No-
 tice of Trial,
 denied.

Davie *against* Atkinson.

East. 13 Geo. II.

DEclaration in Debt on a Recog-
 nizance of Bail, setting forth that
 if the Plaintiff should recover, &c.
 the Principal Defendant should pay, &c.
 or render his Body *on that Occasion* to
 the Prison of the *Fleet*; in assigning
 the Breach, the Plaintiff avers that he
 did recover, &c. but that the Princi-
 pal Defendant did not pay, &c. or
 render his Body to the said Prison *in*
Execution of that Judgment; the De-
 fendant, the Bail, demurred; the Plain-
 tiff joined in Demurrer, and after one
 Argument and an *ulterius concilium*
 ordered, moved to amend his Declara-

Declaration a-
 mended after
 Argument on
 Demurrer,
 and ulterius
 concilium or-
 dered.

Breach in a
 Declaration
 upon a Re-
 cognizance of
 Bail, ill assign-
 ed.

Amendment.

Bail cannot
surrender the
Principal after
the Appearance-
Day of the Return
of the Writ,
when an Action
is brought on the
Recognition.

tion, by striking out the Words *in execution of the Judgment*, and inserting the Words *upon that Occasion*, the Render as well before Judgment as after, being upon the same Process, the Plaintiff having his Election either to charge the Defendant in Execution, or proceed by *Fieri Facias* or *Elegit*; the Court thought the Amendment necessary, and gave the Plaintiff Leave to amend on Payment of Costs. The Defendant's Counsel prayed Leave to render the Principal, which was denied, it being too late after the Appearance-Day of the Return of the Writ. *Agar* for the Plaintiff; *Prime* for the Defendant.

Cooke *against* Shone and others.

Trin. 13 & 14 Geo. II.

Thomson.

Declaration
amended by
altering the
Venue after
Issue joined
and Cause entered.

ACTION against the *Westminster* Bridge Officers, on the Statute 9 Geo. II. c. 29. Motion to amend the Declaration after Issue joined, Cause entered and Counsel fee'd, by laying the Action in *Middlesex* instead of *London*. *Cur'*, Be it so on Payment of Costs, it was a plain Mistake, the Statute directs the Action to be brought in *Middlesex*. *Prime* for the Plaintiff; *Skinner* for the Defendant.

Lyde

Lyde *against* Heale.

East. 12 Geo. I.

Borret.

THE Defendant pleaded in Abatement, that there was another Action depending for the same Matter, and in setting out the Record, instead of saying *Non fuit culpabilis, per vitium Scriptoris* it was said *Non fuit capitalis*. *Shepherd* and *Eyre*, Serjeants, for the Defendant, moved for Leave to amend the Plea; *Chapple* and *Glyde*, Serjeants for the Plaintiff, insisted that a Plea in Abatement was not amendable, because a Matter in Abatement must be pleaded without an Imparance, and an Amendment is in the Nature of an Imparance. *Cur^s, advisar^s, 17 May, per totam Curiam.*
No Rule.

Carpenter Executor *against* Joynes.

Trin. 5 Geo. II.

THE Defendant had given Notice that at the Trial he would give a Note in Evidence against the Plaintiff's Demand; but finding his Notice deficient, Serjeant *Chapple* moved

Notice to set off a Debt at Trial not amendable.

Amendment.

for Leave to amend the Notice, but the Motion was denied.

Walthoe *against* Harrison, an Attorney. Trin. 7 & 8 Geo. II. Thomson.

Jurata amended.

MOTION to amend a *Habeas Corpora* and the *Jurata* in the Record; this Cause was tried at the Sittings after *Hilary* Term, and the *Habeas Corpora* was made returnable on *Wednesday* next after eight Days of the Purification of the Blessed *Mary*, or before Sir *Robert Eyre*, Knt. our Chief Justice of our Court of Common Pleas, if on *Thursday* the seventh of *February*, &c. shall first come; whereas the Return should have been on *Wednesday* next after fifteen Days from the Day of *Easter*, unless Sir *Robert Eyre*, Knt. &c. on *Wednesday* the thirteenth Day of *February*, shall first come, &c. and this was moved to be amended. *Chapple* and *Skinner*, Serjeants, insisted that it was not amendable, and for that Purpose cited a Case in *Carthew* 506.

The Court said this was made good by the Statute 5 Geo. I. c. 13. and that the Case in *Carthew* might be so, but that was before the Statute, and before that Statute

Statute a Fault in the *Habeas Corpora* was not amendable by the Statutes of Jeofail, although the not having a *Habeas Corpora* was helped; as to the *Furata*, which was prayed to be amended, the Case was thus: The *Furata* was thus, the Jurors, &c. are respited here, until from the Day of *Easter* in fifteen Days, unless, &c. whereas it should have been on *Wednesday* next after fifteen Days from the Day of *Easter*; this Amendment the Court took time to consider of. *Jones* 302. *Cro. Car.* 274, 278.

Postea, *Cur'* unanimous. Chief Justice, The Entry of the *Furata* is the Entry of the Clerk of the *Furata*, and this is his Inadvertency, and may be amended.

Fortescue. *Cane* against *Marsh*, in *C. B. Pasch.* 7 *Geo. II.* The *Venire facias* was amended, by making it returnable on a particular Return-Day instead of a general Return-Day; and if it may be amended in a *Venire*, it certainly may be in a *Furata*.

Reeve, The *Furata* is the Award of the Court; this is a Mistake of the Clerk in entering it, and that may be amended. *Sir Bartho. Shower* 61. *Hammond*, *Purcel*, As it is *Vitium Cle-*

Amendment.

rici, it may be amended. *Cur'*, The *Jurata* may be amended.

Kirby *against* Ellifon.

Mich. 5 Geo. II.

The Award
of a Writ of
Inquiry
amended.

Hawkins and Baynes, Serjeants, moved for Leave to amend the Award of a Writ of Inquiry on the Roll; this was a Proceeding by Bill, and on the Roll the Writ of Inquiry was awarded Returnable *a die Paschæ in quindecim dies*; whereas it should have been *die Mercurii prox' post*, &c. on a Day certain. Upon Hearing Serjeant Chapple for the Defendant, the Court made a Rule for the Amendment.

Garland *against* Spicer.

Hil. 4 Geo. II.

Execution
executed not
to be amend-
ed.

9th Feb. **S**erjeant Eyre moved that the Writ of *Fieri Facias*, which was executed, might be amended in the Word *Quadrugent'*, by making it *Quadringent'*; but the Court said they would not Order the Writ to be amended, unless the Serjeant could produce a Case where a Writ of Execution had been amended after it was executed.

Brown

Brown *against* Hamond.

East. 12 Geo. II.

Serjeant *Agar* moved that the Writ <sup>Ca' Sa' executed amend-
ed.</sup> of *Capias ad Satisfaciendum*, which was executed, might be amended by the Judgment Roll, by making the Defendant's Christian Name *Edmund* instead of *Edward*. Rule to shew Cause. *Pistea*, made absolute on Affidavit of the Service, no Cause being shewn.

Societas Belgica ad Indos occidentales negotians versus Henriques & ux'. East. 1 Geo. II.
Borret.

CHAPPLE moved for Leave to Warrant of
amend a Warrant of Attorney; <sup>Attorney a-
mended after
Error brought
and Certiorari
returned.</sup>
the Case was, The Plaintiffs had brought a *Scire Facias* on a Recognizance of Bail, and had filed a Warrant of Attorney *de Placito transgressionis super casum super Scire Facias*; a Writ of Error being brought, and the want of a Warrant of Attorney assigned for Error, a *Certiorari* was awarded and returned, that there was no Warrant of Attorney; the Amendment prayed was to strike out the Words *Transgressionis super casum*,
sum,

Appearance.

sum, and insert the Word *debiti*. Upon hearing *Brantbwayte* for the Defendant, the Court gave Leave to amend.
2 *Brownl.* 167. 2 *Coke* 135.

Appearance.

Parson *against* Whitley.
Hil. 5 Geo. II.

Cooke.

Defendant,
if he under-
takes to ap-
pear, is com-
pellable there-
to.

PER Cur', If the Defendant (though he be not an Attorney) undertakes to appear, we will oblige him to appear. The Chief Justice and *Fortescue* said it extended to a Defendant, if he promised to appear. *Price* thought it was never carried so far as to oblige a Defendant on his own Undertaking; *Denton* absent. *Chapple* for the Plaintiff; *Darnal* for the Defendant.

Theedam *against* Jackson.
Mich. 6 Geo. II.

Thomson.

MOTION that Judgment might be set aside for Irregularity. Rule to shew Cause on the 4th of Nov.

The Declaration was of *Easter* Term
1731, 4 Geo. II.

In *Trinity* Term 1731, the Plaintiff gave a Rule to plead, and demanded a Plea.

On the 21st of *June* in that Term *John Forrest*, Attorney for the Defendant, sent a Note to the Plaintiff and another to his Attorney, to this Purport, I appear for the Defendant and demand *Oyer* of the Bond, *viz.* of the Obligation and Condition, and also of the Articles refer'd to by the said Condition, and also Copies of them, being ready to plead on Receipt thereof.

On the next Day, *viz.* 22d of *June*, the Defendant served the Plaintiff with a special Injunction out of the Exchequer, whereupon the Plaintiff did not proceed further till the Injunction was dissolved, which was on the 23d of *June* 1732, *Trin.* 5 & 6 *Geo.* II.

On *Friday* the 14th of *July* 1732, the Plaintiff gave *Oyer* pursuant to the above Demand; but *Forrest* the Defendant's Attorney, refusing to pay for the Copies of the Bond, &c. the Plaintiff on the next Day signed Judgment.

Skinner for the Plaintiff.

Cur', The Points insisted on by the Defendant for setting aside this Judgment are,

1. No Appearance entered.

2. No

2. No Rule to plead given but of *Trin.* 1731.

3. For that the Defendant had not as long Time to plead after *Oyer* was given, as he had at the Time he demanded *Oyer*.

Attorney undertaking, bound to Appear, and can't take Advantage of want of Appearance.

When Plaintiff not bound to give a new Rule to plead.

As to the first Point, the Court said that *Forrest*, the Defendant's Attorney, having undertaken to appear, his not having done it should not prejudice the Plaintiff, and they would compel him to appear according to his Undertaking.

As to the second Point, it was held that the Rule to plead, given in *Trin.* 1731 was sufficient, the Plaintiff being prevented from Proceeding by the Injunction, and that when the Injunction was dissolved, the Plaintiff was immediately in the same State and Condition as he was at the Time the Injunction was served; that this Case differed as to this Point from that where a Plaintiff has delayed himself and stayed Proceedings for a Term or two, for then he must give a new Rule to plead in that Term in which he signs Judgment.

Like Time to plead after *Oyer* given, as when demanded.

As to the third Point, the Court and the three Prothonotaries agreed that the Defendant should have as much Time to plead after *Oyer* given, as he had at the Time *Oyer* was demanded.

And

And upon this Point the Court held that the Judgment was irregular, and ordered it to be set aside, with Costs.

The Plaintiff had insisted that this Judgment was regular, because the Defendant's Attorney, when *Oyer* was given, had refused to pay for the Copies of the Bond, &c. which were long ; but the Court and all the Prothonotaries held that the Plaintiff could not sign Judgment for this Reason ; for this Point differs from that of signing Judgment, for not paying for a Copy of the Issue or Demurrer Book, because the Declaration is not complete till *Oyer* be given ; but they held that the Plaintiff was not obliged to deliver the Copies unless he was paid for them.

On giving *Oyer* can't sign Judgment for not paying for the Copies, but may refuse to deliver 'em.

Maurice one, &c. against Barry.
Mich. 2 Geo. II.

Foley.

UPON Motion to set aside a Judgment in this Cause, there were two Points questioned upon the Statute to prevent frivolous and vexatious Arrests ; the first was, the Plaintiff swore he had delivered to the Defendant that Copy of the Declaration, with a Note thereon in Secretary Hand, signifying the Nature of the Action, and that

When the Plaintiff has appeared for the Defendant he may proceed pursuant to the Rule of Mic. 1 Geo. 2. notwithstanding the Defendant may have employed an Attorney,

Appearance.

that a Declaration was left in the Prothonotary's Office, without mentioning in which Prothonotary's Office; the Court said this was a good Notice, in regard it was wrote on the Copy of the Declaration delivered to the Defendant, and by such Copy he must needs know in whose Office it was. The next Point was this, the Plaintiff had entered an Appearance for the Defendant, and after Rule to plead given, signed Judgment without calling for a Plea, notwithstanding the Defendant had given him Notice that he had employed an Attorney to appear and plead for him, and named his Attorney to the Plaintiff. The Court said that if the Defendant failed in entering his Appearance in Time, and the Plaintiff entered it for him, the Plaintiff might proceed pursuant to the Rule, notwithstanding the Defendant employed an Attorney afterwards, and the Plaintiff knew such Attorney; and so held the Judgment in this Cause to be regularly signed. *Comyns* for the Plaintiff; *Glyde* for the Defendant.

Canter *against* Jockham.

Hil. 5 Geo. II.

Foley.

PER Cur', If the Plaintiff enters an Appearance for the Defendant, pursuant to the late Statute, he may proceed upon the Rule of *Mich. 1 Geo. II.* throughout, notwithstanding any Notice that the Defendant has employed an Attorney. If Plaintiff appears for Defendant, he may proceed, and need not take Notice of any Attorney employed by the Defendant.

The like Resolution, *Sbrigley against Malher, Mich. 7 Geo. II. Thomson.*

Wrath *against* Bristow.

Mich. 1 Geo. II.

THE Court held that the Plaintiff must enter an Appearance for the Defendant, upon the Statute to prevent frivolous Arrests, before he delivers the Declaration upon common Writs, and set aside a Judgment signed in this Cause, the Appearance being entered by the Plaintiff for the Defendant after the Declaration was delivered. *Whitaker* for the Plaintiff; *Baines* for the Defendant. Appearance by Plaintiff for Defendant must be before Declaration delivered.

Jones

Jones *against* Meriden.

Trin. 2 Geo. II.

Foley.

Plaintiff may enter Appearance for Defendant the Day after the Appearance-day of the Return of the Writ.

Determined *per Cur'*, that the Plaintiff may enter an Appearance for the Defendant, *cirtute Statuti* to prevent frivolous and vexatious Arrests, the next Day after the Appearance-day to the Return of the Writ.

Morse an Attorney *against* Farnham. Trin. 6 & 7 Geo. II.

Thomson.

Plaintiff can't appear for the Defendant till the 9th Day.

Attachment of Privilege returnable on *Friday* next after the Morrow of the Holy *Trinity*, being the 25th of *May*; the Plaintiff entered an Appearance for the Defendant on the first of *June*, being the eighth Day, left a Declaration in the Office, and gave Notice of it, a Rule to plead, and for want of a Plea, signed Judgment. Serjeant *Corbet* moved that the Judgment might be set aside, because the Appearance was entered on the eighth Day, when it should not have been entered until the ninth Day. Upon hearing *Darnal* and *Hawkins*, Serjeants, for the Plaintiff, the Court said the

Appearance.

33

Appearance being entered by the Plaintiff for the Defendant on the eighth Day was wrong, it should have been on the ninth Day, but the Application to the Court being after Judgment was too late. No Rule.

Irregularity in entering Appearance too late to be complained of after Judgment.

Bosanquet and others, *against*
Rundo. Hill. 7 Geo. II.

THE Writ was returnable *Octab. Hil.* a Declaration was left in the Office, Notice thereof, and a Rule to plead was given on the 23^d of *January*; the Rule to plead was out on the 26th of *January*; on the 28th of *January* the Plaintiff entered an Appearance for the Defendant, and in the Afternoon signed Judgment. *Cur'*, The Defendant had eight Days to appear in, exclusive of the Return-Day, and therefore the Plaintiff could not sign his Judgment until the 29th; the Judgment must be set aside. *Darnal* for the Plaintiff; *Chapple* for the Defendant.

On Process the Defendant has eight Days to appear, exclusive of the Return-Day.

D

Elwood

Elwood *against* Elwood.
Mich. 9 Geo. II.

Cooke.

Affirmation of
a Quaker not
sufficient to
ground an
Attachment.

MOTION for an Attachment for not performing an Award; the solemn Affirmation of a Quaker was produced of the due Execution of the Award; the Court refused to grant the Motion, because an Attachment is a criminal Process, and in such Cases the Affirmation of a Quaker is not to be taken.

Attorney.

Taylor *against* Fuller an Attorney,
and Executor. Trin. 5 Geo. II.

Cooke.

An Attorney
not suable
as Executor
by Bill.

ACTION by Bill brought against the Defendant as Executor; he demurred to the Bill, and concluded in Bar. *Cur'*, He ought to have prayed Judgment in Abatement; but this Proceeding appearing to be wrong upon the Face of the Record, Judgment was given for the Defendant, *quod billa cassetur*

cassetur nisi Causa, and was afterwards made absolute. *Glyde* for the Defendant; *Baynes* for the Plaintiff.

Adkin *against* Worthington an Attorney. Trin. 7 & 8 Geo. II.

Borret.

BILL filed against the Defendant; the Defendant demurred, and shewed for Cause, that it did not appear by the Memorandum what the Action was, as Debt or Case. *Cur'*, The Tenor of the Bill set forth *verbatim* in the Declaration, sufficiently shews the Nature of the Action, and it is not absolutely necessary, though it is the usual Form, to set forth the Nature of the Action in the Memorandum. *Chapple* for the Plaintiff; *Eyre* for the Defendant.

In the Memorandum of the Declaration against an Attorney, the Nature of the Action need not be set forth.

Anonymus.

Hill. 12 Annæ.

AGREED that the Plaintiff, who was an Attorney, should have no Bail, because he had not delivered his Bill before the Arrest; and therefore it was ordered that the Defendant should be discharged on a Common Appearance.

Attorney not intitled to Bail, no Bill being delivered until after Arrest.

Clarke an Attorney *against* Godfrey. Easter 11 Geo. I.

Borret.

Attorney must
deliver his
Bill before
Action
brought.

Stat. 3 Jac. I. c. 7. Agreed *per totam Curiam*, that an Attorney must deliver his Bill before he brings an Action.

Hirse *against* Dixon.

Mich. 6 Geo. II.

Cooke.

Attorney allowed Costs of
Taxation.

THE Court ordered Costs of Taxation to be allowed to an Attorney, there not being a sixth Part of his Bill taken off. *Baynes* for the Attorney; *Chapple* for the Defendant.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Sum Total	75	15	7
Deductions	7	3	10
Allowed	68	11	9
Whereof paid	64	18	3
Remaining due	3	13	6

Marsh

Marsh *against* Carter.

Mich. 8 Geo. II.

Thomson.

SERJEANT *Birch* moved that the Plaintiff's Bill delivered might be referred to be taxed. Rule to shew Cause. *Umlin* for the Plaintiff, shewed for Cause that a Bond had been given for the Debt five Years ago, and the Vouchers delivered up. *Cur'*, Let the Rule be discharged, an Attorney at this Rate could never be safe.

Attorney's Bill, after Bond given and Vouchers delivered up, not to be taxed.

Ray *against* Jackson.

Easter 8 Geo.

Thomson.

THE Plaintiff was an Attorney, and this Action was for Fees and Disbursements; the Plaintiff had delivered to the Defendant a Bill, wherein several Abbreviations were made, as Mr. for Master, pd. for paid, &c. At the Trial of this Cause there was a Verdict for the Plaintiff; but a Point was reserved, whether the Plaintiff could maintain his Action upon this Bill so delivered with Abbreviations. Upon the Stat. 2 G. II. c. 23. s. 22. it was insisted for the Plaintiff, that by the Stat. 6 Geo. II. c. 14. s. 5. to

An Attorney's Bill may be delivered with Abbreviations.

explain the Act to make Proceedings in the *English* Tongue, Proceedings in Courts of Justice may be wrote with the like Abbreviations as have been usually made in the *English* Language. The Court held the Delivery of such a Bill, a Proceeding within the Description of the Act of 6 *Geo.* II. and therefore were of Opinion, that upon this Bill the Plaintiff could well maintain his Action; and gave Judgment for him accordingly.

Clarke an Attorney *against* Taylor.
Easter 8 *Geo.* II.

Cooke.

Attorney's
Bill not to be
taxed after
Judgment.

Serjeant *Glyde* moved that the Plaintiff's Bill of Costs might be refer'd to be taxed. Rule to shew Cause, *Chapple* for the Plaintiff; it appeared that the Bill had been delivered six Months ago, an Action brought, Interlocutory Judgment signed, and a Writ of Inquiry executed. *Cur'*, This Application is too late, the Defendant ought to have come in a reasonable Time. *Thomson*, Prothonotary, asked the Court if they would fix it before Judgment, but they would give no Opinion upon that, only on the Case before them. No Rule.

Ecollier

Ecollier *against* Dutoure.
Trin. 13 & 14 Geo. II.

Borret.

THE Attorney delivered a Bill to his Client, amounting to 5*l.* 4*s.* 6*d.* abated 10*s.* and received 4*l.* 14*s.* 6*d.* in full for his Bill; the Client afterwards got an Order that the Bill should be taxed, the Prothonotary took off 19*s.* 6*d.* Serjeant *Ur- lin* moved that the Attorney should pay the Costs of the Taxation, the Bill delivered being less by above a sixth Part than the Bill taxed. Rule to shew Cause. *Draper* for the Attorney, as the Sum of 4*l.* 14*s.* 6*d.* was received in full, it ought to be deemed a Bill for that Sum only, and the 10*s.* which the Attorney abated ought to be deducted out of what the Prothonotary has taken off. *Cur'*, (Chief Justice and Justice *William Fortescue* absent) it must be so, discharge the Rule.

When an Attorney abates, and the Bill is afterwards taxed, the Abatement is to be taken out of the Prothonotary's Deduction.

The King at the Prosecution of
Southwell *against* Sheer.

Mich. 3 Geo. II.

Attorney
arrested on
Attachment,
whilst attend-
ing his Clients
Business in
Westminster-
Hall, dis-
charged.

THE Defendant, an Attorney, at-
tending his Clients Business in
Westminster-hall, was arrested upon an
Attachment for a Contempt, in not
paying Money allowed by the Court.
Curia una voce discharged him.

Maule *against* Grubb.

Trin. 7 & 8 Geo. 2.

Thomson.

Attorney re-
turning from
an Attendance
on the Protho-
notary, arrest-
ed on a Ca'
Sa' out of the
King's Bench.

ONE *Forrest* an Attorney, having
attended the Prothonotary, on
taxing Costs for not proceeding to Trial
in this Cause, upon his Return Home
was taken in Execution on a *Capias ad*
Satisfaciendum issuing out of the Court
of King's Bench. Serjeant *Comyns*
moved that he might be discharged.
The Court said they could not dis-
charge him from the King's Bench pro-
cess; but the Serjeant producing an
Affidavit of Notice of the Motion, &c.
The Court made a Rule for the Officer
and the Plaintiff in that Action to shew
Cause why they arrested *Forrest*, and
why the Goods pledged with them for
his

his Enlargement should not be returned. *Birch* for the Plaintiff; on shewing Cause it appeared that *Forrest* had voluntarily given the Goods to the Plaintiff in that Action. *Cur'*, Let the Rule be discharged.

Pigot against Charlewood.

Trin. 7 & 8 Geo. II.

Cooke.

MOTION to discharge the Defendant who was taken in Execution, whilst he was attending as an Attorney at the Execution of a Writ of Inquiry. Rule to shew Cause. *Urrlin* for the Plaintiff. *Cur'*, The Rule must be absolute for his Discharge.

Attorney taken in Execution whilst attending the Execution of a Writ of Inquiry, discharged.

Collins against Griffen and others.

The same *against* The same.

Trin. 7 & 8 Geo. II.

Cooke.

THE Defendants moved for an Attachment against their own Attorney, Mr. *Phelps*, who had told them that they had a very good Cause, but had given them no Notice of the Trial, so that a Verdict was had against them without any Defence. Rule to

Attorney answerable for the Neglect of his Agent,

Attorney.

to shew Cause. On shewing Cause, *Phelps* laid the Fault upon *Whitchurch*, his Agent, who had sent him only a Copy of the Issue, but no Notice of the Trial; *Whitchurch* said it was the Fault of his Clerk. *Cur'*, It is plain the Defendants have been misled and amused, we must look upon the Person they employed, which is *Phelps*, and he must answer for the Negligence of his Agent, who in this Respect is as his Clerk; *Phelps* may have his Remedy against *Whitchurch*, if he thinks fit, but *Phelps* is the only Person we can take Notice of, therefore let an Attachment go against *Phelps*. *Belfield* and *Eyre* for the Defendants; *Chapple* for *Phelps*; *Darnal* for *Whitchurch*.

Cooper against Sawyer.

Easter 8 Geo. II.

Cooke.

Attachment
against an At-
torney for
practicing af-
ter forejudged.

SErjeant *Wynne* moved for an Attachment against *Richard Hodgson* for practicing as an Attorney, he having been forejudged, and not restored. Rule to shew Cause, afterwards made absolute on Affidavit of Service, no Cause being shewn.

The

The King *against* Hodgson.

Trin. 8 & 9 Geo. II.

THE Defendant being arrested on the Attachment above awarded, entered into a Recognizance ; and now Serjeant *Eyre* moved that he might be discharged on Payment of Costs ; *Wynne* for the Prosecutor, would have had the Judgment set aside, and the Costs of the Writ of Error which had been brought ; but the Court said they would only punish the Defendant with the Costs of the Complaint, and therefore order'd the Recognizance to be discharged on paying the Costs.

Thomson *against* Burton.

Easter 13 Geo. II.

HAND the Defendant's Attorney gave Notice to the Plaintiff's Attorney, that the Defendant had surrendered himself to the *Fleet* Prison, in Discharge of his Bail, when in Fact he had not ; upon this Notice the Plaintiff's Attorney stay'd Proceedings for some Time, but afterwards finding that the Defendant had not surrendered himself, moved for an Attachment against *Hand*, and got a Rule for him to shew Cause, which

Award.

which was afterwards made absolute ; but the Attachment was ordered to stay a Fortnight in the Prothonotary's Hand, that *Hand* might have an Opportunity of making the Plaintiff Satisfaction. *Skinner* for the Plaintiff ; *Umlin* for *Hand*.

Award.

Dickman against Hutherd and others. Mich. 4 Geo.

Refused to make a Parol Award a Rule of Court, or grant an Attachment for Non-performance.

A Submission in Writing, made a Rule of Court, to perform an Award to be made in Writing or by Parol ; the Court refused to make the Award a Rule of Court, or grant an Attachment for Non-performance, because by the Affidavits it appeared to be a Parol Award.

Cookson against Monkhouse.
Easter 8 Geo. II.

Borret.

Attachment for not performing a Parol Award.

SErjeant *Wynne* moved for an Attachment, for not performing a Parol Award for Payment of Money. Rule to shew Cause. *Chapple* shewed Cause, and insisted an Attachment ought not

not to go upon a Parol Award. *Cur'*,
It is a good Award, and an Attach-
ment ought to follow it, the Submission
is to abide the Award either by Word
or Writing. Rule absolute.

Carpenter *against* Joynes.

Hil. 5 Geo. II.

Cooke.

REference by Order of *Nisi Prius*, Arbitrators by
the Referees award Costs of Suit Order of
and Costs of the Reference; the Pro- Court may
thonotary made a Doubt whether he award Costs
could allow the Costs of the Reference. subsequent to
Cur', If it had been on a Submission the Submissi-
by Bond, and the Arbitrators had on, Arbitra-
awarded Costs subsequent to the Bond tors by Bond
it would have been wrong; but can't.
Arbitrators appointed by Order of *Nisi*
Prius, may allow Costs subsequent to
the Order; and therefore the Court
directed the Prothonotary to tax the
Costs of the Suit, and also the Costs of
the Reference, but ordered him to di-
stinguish them.

Beck

Beck against Timbrel.

Easter 5 Geo. II.

Borret.

Party absconding, Copy of Award left at his House.

THE Plaintiff keeping out of the Way, the Defendant could not serve her with a Copy of the Award. *Skinner* moved, on an Affidavit of the Fact, that leaving a Copy of the Award at the Defendant's House might be good Service. (Chief Justice absent) Rule to shew Cause. *Hawkins* and *Birch* shewed Cause, and it appeared by an Affidavit the Plaintiff had made, that she had seen a Copy of the Award; Chief Justice, discharge the Rule before us, but let the Plaintiff shew Cause why an Attachment should not go against her for not performing the Award. *Cur.* The Leaving a Copy of the Award at the Party's House, goes upon the same Reason as leaving a Copy of a Rule.

Anonymus.

Easter 6 Geo. II.

Where a Demand of the Performance of an Award is not necessary.

ETRE, Chief Justice, Where Time and Place is appointed by an Award for the doing a Thing, it is equivalent to a Demand of the Performance

formance of the Thing awarded, but it is necessary to prove Service of the Award upon the Parties.

Potter against Day.

Mich. 7 Geo. II.

Cooke.

SERJEANT *Eyre* moved that the Verdict in this Cause might be set aside; the Case was this, the Cause was refer'd before the Assizes to Arbitrators, who awarded all Proceedings to stay, and mutual general Releases to be given; notwithstanding this, the Plaintiff proceeded to Trial. The Court refused to set aside the Verdict, and left the Plaintiff to his Remedy on the Arbitration Bond.

Plaintiff proceeds to Trial, notwithstanding a Reference and Award, Defendant's Remedy is only on the Arbitration Bond.

Gatcliffe against Dunn.

Mich. 11 Geo. II.

UPON the Trial of this Cause, there was a Reference to the three Foremen of the Jury, so that they made their Award in Writing *indented* under their Hands and Seals, &c.

Submission to Award to be made by Writing indented, Award good if not indented.

The Arbitrators made their Award in Writing, but not indented. *Eyre* and *Umlin*, Serjeants, moved for an At-

Attachment for not performing the Award ; and a Rule was made to shew Cause.

Wright and *Comyns* shewed for Cause, that the Award was not *Indented*, and therefore did not pursue the Submission.

1 *Salk.* 71.

Chief Justice, The Word *Indented*, is wholly immaterial, and is as Ridiculous as if it had been said that the Award should be made upon Gilt Paper ; the King's Bench will never suffer an Award to be objected to for want of Form, and this is Form.

Cur' unanimous, this is a good Award. Attachment granted.

Bail.

Nichols *against* Dulehanty.

Mich. 12 Geo. II.

Thomson.

Affidavit of Debt, Defendant arrested and held to Bail. Serjeant *Hayward* moved that the Defendant might be discharged upon a Common Appearance, because the Party who made the Affidavit of the Debt, and who was the Plaintiff's Wife, had been convicted of picking Pockets, been transported, and afterwards had received Sentence of Death for returning from Transportation; the Record of the Conviction was read in Court. Rule to shew Cause. *Umlin* for the Plaintiff, offered to supply this Defect by new Affidavits, proving a Confession of the Debt, and that the Defendant intended to leave the Kingdom. *Cur'*, This is no Affidavit in Law, it is a mere Nullity, and the Defect cannot be supplied by subsequent Affidavits; the Defendant must be discharged.

Affidavit of a Debt made by a Person convicted of Felony not sufficient to hold to Bail, and not to be supplied by subsequent Affidavit.

E

Jones

Jones *against* Leighton, Bart.

Easter 9 Geo. II.

Attorney if he undertakes, must file Bail, tho' there be no Affidavit of the Debt.

THE Question was, Whether an Attorney undertaking to file special Bail is bound to do it, when there is no Affidavit filed of the Debt? *Cui'*, If an Attorney undertakes, he engages at all Events, and whether there was an Affidavit or not is not material, he must file Bail. *Birch* for the Attorney; *Wright* for the Plaintiff.

Huggins *against* Bambridge.

Hil. 12 Geo. II.

Borret.

Bail put in and Notice given before Arrest, held good, Plaintiff not excepting within 20 Days after Notice, and Defendant arrested after Bail put in, discharged.

A Capias ad respondendum indorsed for Bail being issued against the Defendant, he before the Return of it, and before he was arrested put in Bail before a Judge, and gave Notice thereof to the Plaintiff's Attorney, but he not regarding the Notice, caused the Defendant to be arrested, who being in Custody, moved for a *Supersedeas*, which upon a Rule to shew Cause was granted, the Court being of Opinion that the Plaintiff not having excepted to the Bail within 20 Days after Notice,

tice, the Bail ought to stand. *Eyre* for the Plaintiff; *Skinner* for the Defendant.

Huggins against Bambridge.

Easter 13 Geo. II.

Borret.

THE Defendant before Arrest put in Bail to a *Capias ad respondendum* before a Judge, and gave Notice thereof to the Plaintiff's Attorney, but he not being satisfied with the Bail, caused the Defendant to be arrested, who thereupon applied to the Court, and obtained a Rule for the Plaintiff, and *Duel* the Sheriff's Officer, who arrested the Defendant, to shew Cause why an Attachment should not issue against them. Upon shewing Cause the Court was of Opinion, that before an Arrest Bail cannot be regularly put in before a Judge without Consent, but may before the Return of the Writ after an Arrest. *Burnet* and *Bootle* for the Plaintiff; *Skinner*, *Wynne* and *Agar* for the Defendant.

Bail put in before Arrest, not regular without Consent.

Garnet *against* Heavised.

Hill. 7 Geo. II.

Thomson.

Bail on a
Testatum.

MOTION that Proceedings upon the Bail-Bond might be staid upon putting in special Bail, paying Costs, pleading the general Issue and taking Notice of Trial within Term; and that the Defendant might have ten Days Time to put in such special Bail; the Plaintiff had sued out a *Testatum* Attachment of Privilege from *Middlesex* into the County of *York*; the Defendant by Mistake put in Bail as in a *Yorkshire* Cause, and filed the Bail-piece with the Filacer of the County of *York*. Rule to shew Cause, which was afterwards made absolute on hearing Counsel on both Sides.

Gibson *against* Britton.

Mich. 8 Geo. II.

On a Habeas
Corpus Defen-
dant not obli-
ged to put in
Bail till served
with a Judge's
Order.

AN Action was brought in the Court of the Sheriffs of *London*; the Defendant brought a *Habeas Corpus cum causa*, and removed the Cause into this Court, but not having put in Bail the Plaintiff sued out a *Procedendo*. Serjeant *Skinner* moved to set aside the

the *Procedendo*, because there was no Judge's Order for the Defendant to put in Bail. The Question was, Whether the Defendant should not at his own Peril put in Bail, or whether the Plaintiff should not procure a Judge's Order and serve it upon the Defendant, that unless Bail be put in, a *Procedendo* should be awarded. Adjudged *per totam Curiam*, That such an Order was necessary, and therefore the *Procedendo* was set aside.

Field *against* Walford.

Hill. 3 Geo. I.

Borret.

DE B T on a Bond to the Sheriff, The Sheriff can't take Bail on an Attachment for a Contempt. taken upon an Attachment issuing out of this Court for a Contempt in not paying Costs; the Defendant craves *Oyer*, and pleads the Statute of 23 H. 6. c. 10. and that the Bond was taken *colore Officii*, the Plaintiff demurs. *Cur' advisar' 17 Nov. 4 Geo. I. Judicium pro Def. per totam Curiam.*

Waddington *against* Fitch.

Hill. 7 Geo. II.

Cooke.

Sheriff can't
take Bail up-
on an At-
tachment for
a Contempt.

DEBT upon a Bail-Bond to the Sheriff upon an Attachment out of Chancery for a Contempt. The Court held that the Sheriff could not take Bail upon an Attachment for a Contempt; Judgment *Nisi* for the Defendant.

The King *against* Sleigh.

Mich. 9 Geo. II.

Thomson.

Sheriff can't
take Bail to
an Attach-
ment.

CUR', Neither the Sheriffs of *London*, or any other Sheriff can take Bail to an Attachment for a Contempt, such Bail thereto can only be taken by a Judge.

Jackson *against* Duckett.

Hill. 13 Geo. I.

Cooke.

If an Action be brought on a Judgment, the Defendant shall give Bail if there was no Bail in the Original Action; aliter if

THERE was a Judgment obtained, and a Writ of Error brought; and pending the Writ of Error, an Action of Debt was brought on the

Bail in the Original Action.

the Judgment; and now *Wynne* moved to have the Defendant discharged on a common Appearance, and for an Imparlance until the Writ of Error should be determined; as to the common Appearance to the Action of Debt on the Judgment, *Eyres*, Chief Justice, said that he had inquired of Justice *Tracey* concerning the Practice of this Court about Bail in such Cases, and he informed him that the constant Practice was, that if Bail was given in the Original Action there was no need of Bail in the Action upon the Judgment; but if none in the Original Action, then there must be Bail on the Action upon the Judgment, and in this the Court accorded; as to the Imparlance till the Writ of Error was determined, the Court took Time to consider; for the Chief Justice said the King's Bench always granted an Imparlance, and that it was so settled in that Court, upon great Consideration in Lord *Parker's* Time; but the Prothonotaries informed the Court that the Practice in this Court was otherwise; for here the Court gives the Plaintiff Liberty to proceed to Judgment, but not to take out Execution, and that was so determined *Trin. 9 Geo. I.* in a Cause of *Coe* against *Allam*; *sed Ajornatur*; and

Debt on a Judgment after Error, the Plaintiff may proceed to Judgment, but not to take out Execution till Error determined.

the Rule in that Cause ordered to be produced; *Postea* the Rule was produced, and the Court gave the Plaintiff Leave to proceed to Judgment, but not to take out Execution till the Writ of Error was determined.

Revel *against* Snowden.

Mich. 6 Geo. II.

Borret.

Bail shall be put in to an Action of Debt on a Judgment tho' Bail in the Original Action, if that Bail be discharged by having surrendered the Defendant.

IN the Treasury Chamber. The Defendant put in Bail to an Action, the Plaintiff recovered Judgment, and the Bail surrendered the Defendant, who was afterwards discharged by *Superse-deas*, upon which he entered an Appearance; after which the Plaintiff brought an Action of Debt upon the Judgment. And now the Question was, Whether upon this Action upon the Judgment, the Defendant should be held to Bail? The Judges agreed that when Bail is put in to the Original Action, no Bail ought to be put in on the Action of Debt upon the Judgment; but if no Bail be put in to the Original Action, then Bail must be put in to the Action of Debt on the Judgment; in this Case the Bail in the Original Action, having surrendered the Defendant, were discharged, and therefore it is the same

as

as if no Bail had been put in to the Original Action, and consequently there must be Bail put in to the Action of Debt on the Judgment. *Sed vide Regul. Hil. 8 Geo. 2.*

Weyman *against* Weyman.

Mich. 10 Geo. II.

Thomson.

THE Plaintiff recovered a Judgment in this Court; the Defendant brought a Writ of Error and put in Bail thereon; after, pending the Writ of Error, the Plaintiff in the Original Action brought an Action of Debt on the Judgment, and held the Defendant to Bail. Serjeant *Eyre* moved that the Defendant might be discharged on a common Appearance; he agreed that as in the Case of *Jackson* and *Ducket*, if there was no Bail in the Original Action, there must be Bail in the Action of Debt upon the Judgment; but if there was Bail in the Original Action, then no Bail was required on the Action of Debt upon the Judgment; but he said that in that Case it did not appear that Bail was put in on the Writ of Error, which is done in this Case, so that here the Plaintiff hath Bail sufficient to answer his

Bail must be put in on Debt upon a Judgment, if no Bail in the Original Action, tho' Bail be put in on a Writ of Error brought.

his Demand. Serjeant *Chapple* opposed this Motion, and said by the Practice of this Court Bail must be put in on the Action of Debt upon the Judgment, if there is no Bail in the Original Action; and there was no Distinction whether there was Bail on the Writ of Error or not; that as to the Plaintiff's having a Security for his Demand by Bail on the Writ of Error, there might be Accidents whereby such Bail might not be liable, *vide Carth.* 520. as by the Writ's being quashed, the Death of the Chief Justice, or otherwise. The Court agreed that there was no Distinction where Bail was put in on a Writ of Error or not, but that by the Practice of this Court, if there was Bail put in on the Original Action, no Bail should be put in on the Action of Debt upon the Judgment; but if no Bail in the Original Action, then there must be Bail on the Action of Debt upon the Judgment. And therefore refused to discharge the Defendant upon a common Appearance.

Bilson

Bilson against Smith.

Hil. 5 Geo. II.

Foley.

AN Action was brought against a Soldier held to Bail in Debt on a Judgment for above 10 l. tho' the Original Debt was under 10 l. Plaintiff recovered in the Action, and the Debt and Costs amounted to 15 l. upon this Judgment the Plaintiff brought an Action and held the Defendant to Bail; and now the Court was moved by Serjeant *Chapple*, that a common Appearance might be taken for the Defendant. Upon the Statute 4 Geo. II. to prevent Mutiny and Desertion, he being a Soldier, this Matter was fully debated, and the Court said that this being an Action of Debt upon a Judgment for above 10 l. the Act of Parliament did not extend to it, and therefore refused to discharge the Defendant upon a common Appearance.

Bowler against Owens.

Mich. 6 Geo. II.

MOTION to discharge the Defendant upon a common Appearance, by Virtue of the Act for preventing Mutiny and Desertion, he being a Soldier in actual Service. Out Pensioner of Chelsea-College held to Bail not being a Soldier in actual Service.

being an Out Pensioner of *Chelsea-College*, denied, such Out Pensioners not being Soldiers in actual Service. *Darnal* for the Plaintiff; *Eyre* for the Defendant.

Nichols and others against Wilder.
East. 6 Geo. II.

Cooke.

Soldier held to
Bail on an
Action upon
a Judgment,
for above 10 l.
tho' the Ori-
ginal Action
was under
10 l.

Serjeant *Darnal* moved to discharge a Soldier upon a common Appearance; he was arrested in an Action of Debt upon a Judgment for above 10 l. but the Original Action upon which the Judgment was recovered was under 10 l. Upon hearing Serjeant *Chapple* for the Plaintiff, who cited the Case of *Bilson and Smith, supra*, the Court refused to discharge the Defendant.

Mitchel against Wharton.
Trin. 6 & 7 Geo. II.

Out Pensioner
of Chelsea,
not a Soldier
in actual Ser-
vice.

Serjeant *Comyns* moved to discharge the Defendant out of Execution, he being an Out Pensioner of *Chelsea-College*; refused, he not being a Soldier in actual Service; the Case of *Bowles against Owens* was cited by the Court.

Flanders

Flanders *against* Nichols.

Easter 13 Geo. II.

JUDgment upon Writ of Inquiry in the Palace Court, for 11 *l.* 11 *s.* 4 *d.* *viz.* 3 *l.* 17 *s.* 4 *d.* Damages, and 7 *l.* 14 *s.* Costs; the Defendant moved the Judge of that Court, that no Execution might issue against his Person, he being a Soldier in his Majesty's Service, which was ordered accordingly, with Directions to the Defendant to apply for Costs in Case his Person should be taken in Execution; the Plaintiff brought an Action of Debt upon that Judgment in this Court, and held the Defendant to Bail, who moved that the Bail-Bond might be delivered up on entering an Appearance and for Costs. Rule to shew Cause. On shewing Cause the Court was of Opinion, that tho' the former Acts of Parliament have proved defective in preventing Soldiers being taken out of his Majesty's Service, yet the last Statute of 13 Geo. II. is sufficient, the original Debt being under 10 *l.* And the Plaintiff having proceeded to hold the Defendant to Bail, after he knew the Opinion of the Judge of the Palace Court; the

A Soldier shall not be held to Bail on an Action of Debt on a Judgment if the Original Debt was under 10 *l.*

the Rule was made absolute *in toto*. *Skinner* for the Plaintiff; *Agar* for the Defendant.

Duncombe *against* Motteram and others. Trin. 2 & 3 Geo. II.
Borret.

Bail ordered
in an Action
for mesne Pro-
fits.

T*Homson*, Secondary, moved in the Treasury that the Defendant might be held to Bail upon an Affidavit in this Action, which was for mesne Profits. And he produced a Rule made *Pas.* 1 Geo. 2. *Pulleyne & ux'* against *Richardson*, where the like had been ordered; the Judges said it had not been usually done; and *Fortescue* said it had never been done so in the King's Bench, yet it was very reasonable; and as it had been settled in the Case cited, they ordered the Defendant *Motteram* to be held to Bail for 500*l.* but would not order the other Defendants to be held to Bail, they being only his Undertakers.

Had:

Hadderweek *against* Catmur.

Mich. 7 Geo. II.

AN Action was brought against the Defendant for a Criminal Conversation with the Plaintiff's Wife. Upon an Affidavit of the Criminal Conversation, Justice *Reeve* had granted an Order to hold the Defendant to Bail. Serjeant *Skinner* moved that the Defendant might be discharged on a common Appearance, and produced an Affidavit that the Plaintiff being gone a Voyage to *Guinea*, his Wife received Advice of his Death, some short Time after which, the Defendant married her; whereupon the Plaintiff arriving in *England* brought this Action. The Court said this was an unfortunate Case, but could not discharge the Defendant on a common Appearance, as it would be determining the Cause on a Motion.

On an Action for Criminal Conversation the Court refused to discharge the Defendant on a common Appearance, tho' the Defendant had married the Wife on her receiving Advice of the Plaintiff's Death.

Cooke and others *against* Sankey.
Trin. 7 & 8 Geo. II.

Cooke.

Bail in Tres-
pafs for enter-
ing the Plain-
tiff's Hop-
Ground and
taking away
Hop-Poles.

SERJEANT *Darnal* moved that the Defendant might be discharged upon a common Appearance; the Action was Trespafs for entering the Plaintiff's Hop-Ground and taking away his Hop-Poles; the Plaintiff had made an Affidavit before the Filacer of the Fact, and that the Defendant had carried away Twenty thousand Hop-Poles, to his Damage of 40*l.* upon which the Defendant was held to Bail. *Darnal* insisted that in Trespafs the Defendant could not be held to Bail without a Judge's Order. *Cur'*, The Statute makes no Difference in Actions, it may be reasonable to have a Judge's Order in Batteries, but in such a Case as this it is not necessary; so refused to make a Rule to shew Cause.

Blick *against* Halfpen and his Wife.

East. 8 Geo. II.

Borret.

IN the Treasury. Motion to discharge the Wife upon a common Appearance, this was an Action of Trover for Goods detained by the Wife, the Defendant; the Wife was arrested but the Husband was not; these Cases were cited by the Attornies, *Salk.* 114. *Noy* 79. *W. Jones* 143. *Yelverton* 165. *Eyre*, Chief Justice, cited the following Cases, *Cro. Car.* 118. *Rolls Abr.* 583, and two Cases in *Banco Regis* out of his own Note Book, viz. *Clarkson* versus *Watkinson*, *Trin. 9 Annæ*, where it was held that if an Action be brought against Husband and Wife, and the Wife only is arrested, she shall be discharged upon common Bail, and the Reason was, that otherwise the Husband might contrive the Imprisonment of the Wife; but if the Husband and Wife are both arrested they cannot be discharged without Bail put in for both, and the Reason of that is, that otherwise a Woman may marry a Man in Prison and defraud her Creditors. And the Court of King's Bench held the same in the same Term,

In an Action against Baron and Feme, if the Wife be only arrested, she shall be discharged on a common Appearance; aliter if both arrested.

Feme Covert in a Cause of *Wraworth* against *Williamson* and others. It was agreed that taken in Execution not to be discharged. there was a Difference between Mesne Process and Execution, for if she had been taken in Execution she could not have been discharged. The Judges made a Rule to discharge the Defendant on a common Appearance.

Russel against Gately.
East. 11 Geo. II.

Thomson.

Order for holding the Defendant to Bail for a malicious Prosecution discharged, the Plaintiff having been acquitted on a Defect in the Indictment only.

THE Plaintiff brought his Action for a malicious Prosecution, *viz.* for Indicting him for a Forgery; upon Affidavit of the Fact, Judge *Comyns* made an Order that the Defendant should be held to Bail for 200*l.* Motion by *Eyre, Parker* and *Hayward*, Serjeants, that a common Appearance might be accepted. Rule to shew Cause. Upon shewing Cause, it appeared that the Plaintiff had been acquitted upon a Defect in the Indictment, and not upon the Merits. *Wynne* and *Wright* for the Plaintiff.

Chief Justice, There is no Foundation to hold this Man to Bail, for it seems unreasonable to hold a Man to Bail when the Indictment had no effect; I think the Order for holding him to Bail

Bail.

67

Bail ought to be discharged, and a common Appearance taken for him. *Cur'* unanimous, and said though we have it in our Discretion to order Bail in such a Case, it must be only used where the Merits of the Indictment have been gone into, for otherwise it would be a great Discouragement to Prosecutors.

Male, Assignee of the Sheriff, *a-*
gainst H. Mitchel.
Mich. 3 Geo. II.

Borret.

Monday 9th of Novemb. **T**HE Defendant moved on the Statute 12 Geo. I. c. 29. to set aside a Judgment on a Bail-Bond. The Plaintiff had sworn his Debt to 28 *l*. The Sheriff of *Lincoln* took a Bail-Bond in 68 *l*. which was 12 *l*. more than double the Sum sworn to. *Baynes* for the Plaintiff. The Court seemed to think the Sheriff had done wrong in taking the Bail-Bond in more than double the Sum sworn to; and gave the Defendant Leave to plead the Statute if he thought fit, on Payment of Costs, but said it would have been right for the Sheriff to have taken the Bail-Bond in

Bail-Bond to be taken in double the Sum sworn to.

F 2 double

double the Sum sworn to, and indorsed it on the Writ.

Nott *against* Stevens.

Hil. 3 Geo. II.

Bail-Bond may be sued by the Executor of the Assignee.

DEBT on a Bail-Bond brought by the Executor of the Assignee of the Sheriff. Demurrer. It was insisted for the Defendant, on the Statute for the Amendment of the Law, that as the Assignee was dead, the Right of Action could not devolve on the Executor. *Baynes* for the Defendant; *Corbet* for the Plaintiff. Judge *Fortescue* said that the Statute designed a Benefit to the Plaintiff, and not a Prejudice, and there are no Negative Words in the Statute. Chief Justice, *Price* and *Fortescue*. Judgment for the Plaintiff. *Denton* absent.

Ormond, Assignee of the Sheriff, *against* Griffith.

Hil. 7 Geo. II.

Plaintiff may take an Assignment of the Bail-Bond and proceed thereon, tho' he had excepted to the same Bail when put in above.

SErjeant *Chapple* moved to stay Proceedings upon the Bail-Bond; the Case was this, The Defendant in the Original Action put in the same Bail above as were Bail to the Sheriff, to which

though it could not be put in Suit, which are the Words of the Act of Parliament, and Rule of Court. *Cur'* (Chief Justice absent) that Matter need not now be decided, the Bail-Bond was actually put in Suit on the 31st of *Oct.* which was too early, it ought not to have been done till the first of *Nov.* Let the Rule be absolute.

Orpwood against Banniere.

Mich. 8 Geo. II.

Cooke.

Terms of
staying Pro-
ceedings on
the Bail-Bond.

Venue can't
be changed
after Defen-
dant bound to
plead the ge-
neral Issue and
take short
Notice of
Trial.

Special Bail being put in and justified, Proceedings upon the Bail-Bond were staid upon Payment of Costs, receiving a Declaration, pleading the General Issue, and taking short Notice of Trial for the last Sitting in Term, *Chapple* for the Plaintiff; *Skinner* for the Defendant. Immediately after *Skinner* moved that the Venue might be changed from *London* into the Country. *Cur'*, Tho' you have not pleaded, you are bound by the Rule to plead; besides the changing the Venue would in effect be putting off the Trial.

Ward

Ward an Attorney *against* Alder-
ton. East. 13 Geo. II.

ACTION in *Middlesex*, and Writ Proceedings
returnable the first Return of this on the Bail-
Term, the Bail-Bond was assigned; the Bond, staid on
Defendant put in Bail, who justified in Payment of
Court, and then moved after the last Costs, tho'
Sitting within the Term, that Proceed- the Plaintiff
ings on the Bail-Bond might be staid had been de-
on Payment of Costs; the Plaintiff layed a Tri-
al, and therefore the Bail-Bond ought al.
to stand as a Security; but it appear-
ing that the Plaintiff by not having de-
livered a Declaration in the Original
Action *de bene esse*, or otherwise,
had delayed himself; wherefore the
Motion was granted. *Agar* for the
Plaintiff; *Prime* for the Defendant.

Pigot against Berriffe.
Mich. 6 Geo. II.

Borret.

BAIL being justified, Serjeant *Eyre* Bail being
moved that the peremptory Rule justified, pe-
against the Sheriff might be discharged remptory
on Payment of Costs. Rule to shew Rule against
Cause. Serjeant *Chapple* said that the the Sheriff
tho' the Plain- discharged,
tiff had lost a
Trial.

Plaintiff had lost a Trial, and therefore prayed that the Bail might be bound not to surrender, *Cur'*, That will alter the Recognizance; let the peremptory Rule against the Sheriff be discharged on Payment of Costs.

Champion *against* Townsend,
Mich. 12 Geo. II.

Cooke.

Bail when taken by the Sheriff good, afterwards Insolvent, Sheriff liable.

ON a *Cepi Capias* returned the Plaintiff gave a six Day Rule for the Sheriff to bring in the Body of the Defendant. Serjeant *Wright* moved that the Proceedings against the Sheriff might be discharged; the Sheriff on the fourth of *August* last took Bail, which Bail were then good, but are since become Insolvent; the Sheriff is obliged to take Bail by the Statute 23 *H. 6. c. 10. Cur'*, We cannot grant your Motion, but let the Rule be enlarged for three Days longer,

Gwinne

Gwinnel *against* Proctor.

Mich. 4 Geo. II.

Foley.

IN an Action upon the Case for Hired Bail
20 *l.* and Oath made to 19 *l.* 10 *s.* committed.
due.

J—n S—r, a Serjeant at Mace,
W—m S—ll, his Yeoman and
J—b L—n came into Court, to
justify themselves as Bail in this and
several other Causes ; the Attornies for
the respective Plaintiffs being present
in Court, objected that these Persons
were common hired Bail, made it a
Trade, and got considerable Advantage
by it,

Forrest, one of the Attornies, as-
serted this very strenuously, and refer'd
to the Filacer's Book then in Court,
whereby it would appear that they
then stood as Bail in a great number
of Causes.

The Court demanded of them, par-
ticularly *S—r* and *S—ll*, how
many Causes they were Bail in, they
owned they were then Bail in about
fifty Causes, to the Amount of 30,000 *l.*
or thereabouts.

The Court then ask'd *S—ll* and
L—n, the Bail in this Cause, if they
would

would swear themselves worth 19*l*. 10*s*. after all their Debts were paid, supposing all the Recognizances of Bail wherein they stood bound should come upon them; and put the like Question to *S—r* in the other Causes; to which they all answered they were not, and were thereupon rejected as Bail by the Court.

The Court ordered the Recognizances in which they were bound to be searched for, which were as follows; *prout* the Affidavits in Mr. Secondary *Townsend's* Office.

Affidavit of the Plaintiff's Attorney 9th of *Nov.* 1730. That in the Book of Mr. *Vaughan*, Filacer of the Court of King's Bench, *J—n S—r*, Serjeant at Mace, and *W—m S—ll*, his Yeoman, became Bail in the four then preceding Terms in above twenty Causes, and *L—n* in a great many.

Affidavit 12th of *Nov.* 1730, That in the Book of Mr. *Eyre*, Filacer, of this Court, they were Bail as follows.

S—ll.

S——ll.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
The 4 last Terms 17 Causes	2932	12	2
This <i>Mich.</i> Term 20	2308	0	0

In all 37 Causes 5240 12 2

S——r.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
The 4 last Terms 12 Causes	1848	11	0
This <i>Mich.</i> Term 8 Causes	2042	11	0

In all 20 Causes 3891 2 0

L——n.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
The 4 last Terms 2 Causes	61	0	0
This <i>Mich.</i> Term 8 Causes	829	7	8

In all 10 Causes 890 7 8

In Mr. Justice Probyn's Book.

The 4 last Terms, S——ll in 26 Causes	
This Term	21

In all 47

The 4 last Terms S——r in 17 Causes	
This Term	9

In all 26

And

And by the Account which was very long and particular (containing the Names of the Causes, Times and Sums in the Recognizances) and annexed to the Affidavit of the 12th of *Nov.* it appeared, that S——r and S——ll had been Bail in near as many Causes within the beginning of that Term, as in all the preceeding Terms. And that S——ll was Bail, *viz.* 26th of *Oct.* in Mr. *Eyre* the Filacer's Office, only in 14 Causes, for Sums amounting to 2005 *l.* 12 *s.* 6 *d.*

Upon Motion; on reading the said two Affidavits, a Rule was made in this Cause for S——ll to attend the Court, and shew Cause why an Attachment should not go against him; and upon *Tuesday* the 17th of *Nov.* he attended, but shewing no Cause was committed to the *Fleet*.

Thursday the 26th of *November*, Mr. S——ll was brought into Court, pursuant to a Rule made the Day before; and upon his humble Petition, setting forth that he had made Satisfaction to the Plaintiff, and paid his whole Debt and Costs, and acknowledging his Offence and the Justice of the Court in their Punishment of it, and promising not to offend again in the like Kind, he
was

was discharged with a severe Reprimand.

This Practice of the Serjeants at Mace and their Yeomen, being laid before the Lord Mayor and Court of Aldermen, they made an Order to prevent the like for the future in the City Courts, and to revive an antient Act of Common Council made against such Practices.

Goswell an Attorney *against* Blunt.

Mich. 6 Geo. II.

Cooke.

THE Defendant's Attorney filed Bail in Time, the Plaintiff gave Notice in Writing to the Defendant's Attorney that he excepted to the Bail, but did not mark the Exception on the Bail-piece; the Defendant's Attorney gave two or three Notices of justifying, and at last the Bail did justify. On Motion to stay Proceedings against the Sheriff, a Question arose, Whether the Plaintiff ought not to have marked his Exception on the Bail-piece? *Cur'*, The Plaintiff ought to have entered his Exception on the Bail-piece, and as he did not, the Bail is become absolute, notwithstanding the Defendant's several Notices of justifying; therefore the Rules

Exception to Bail must be marked on the Bail-piece.

Rules against the Sheriff must be discharged.

Simpson against Ashburn.

Mich. 12 Geo. II.

Borret.

Exception in Vacation, whether the Defendant has the first four Days of the next Term to justify his Bail.

THE Defendant put in Bail on the 26th of *June*, which was after last Term; the Plaintiff on the same Day excepted to the Bail, the Bail justified before Mr. Justice *Denton*, at his Chamber, which the Plaintiff objecting to, the Defendant gave Notice that the Bail would justify in Court on the first Day of this Term, or as soon after as Counsel could be heard; the Bail not justifying then the Defendant gave Notice of justifying on the next Day, but they failing again, the Plaintiff took an Assignment of the Bail-Bond; on the 28th Day of *Oct.* the Bail justified. Serjeant *Hayward* moved that the Proceedings upon the Bail-Bond might be set aside. Rule to shew Cause. *Bootle* for the Plaintiff. The Question was, Whether as the Exception to the Bail was in the Vacation, the Defendant had the first four Days in Term to justify his Bail in, or was obliged to do it on the first Day? *Cur'*, We will con-

consider and settle this Matter, but here the Bail did not justify within the first four Days; therefore let the Rule be discharged.

Palmer *against* Elton.

Trin. 5 Geo. II.

Serjeant *Hawkins* moved to justify Bail, but was opposed by Serjeant *Chapple*, who shewed that the Cause had been tried and final Judgment given. No Rule, the Motion came too late.

Ellis *against* Manwaring and others.

Trin. 5 Geo. II.

Serjeant *Glyde* moved to justify Bail, and produced an Affidavit of Notice. Serjeant *Chapple* for the Plaintiff said it was too late to justify, because the Bail had pleaded *comperuit ad diem*, and the Plaintiff had replied; he quoted *Palmer* and *Elton* above. *Per totam Curiam*, No Rule.

Teale *against* Cheshyre.

East. 12 Geo. II.

Thomson.

Two Days
Notice of
justifying Bail.

ON a Motion by Serjeant *Price* to justify Bail, the Court declared that after this Term the Defendant should give Notice of justifying Bail two Days before the Day of Justification, and that they would not indulge the Defendant with any farther Time, it being an Artifice to defeat the Rule for obliging Defendants to justify their Bail in four Days after Exception taken, and is plainly getting two Days.

Pinfold against Eastbet.

Hil. 6 Geo. II.

Thomson.

Motion to add
and justify at
the same
Time, denied.

SERJEANT *Skinner* moved to change one of the Bail, he being a material Witness, and produced an Affidavit of Notice that *A. B.* would be added, and at the same Time would justify; but the Court would not receive the Motion, because the new intended Bail was not actually added before the Motion to justify; the Defendant may if he pleases add to a complete Bail, without applying to the Court for Leave.

Wingfield *against* Goodrick.

Mich. 7 Geo. II.

Serjeant *Eyre* moved to justify Bail by Affidavit. Serjeant *Wright* objected that the Bail being put in before a Judge must justify in Person, and could not do it by Affidavit; and this the Court said was the Practice.

Gregory *against* Gurden.

Easter 10 Geo. II.

Cooke.

THE Defendant put in Bail, the Plaintiff not Plaintiff excepted to one of the Bail, the Defendant added another Bail, but did not justify his Bail in Court within the four Days, supposing that it was necessary for the Plaintiff to except to the additional Bail if he was not satisfied; the Plaintiff took an Assignment of the Bail-Bond, and put it in Suit. Serjeant *Hayward* moved that the Proceedings might be staid. Rule to shew Cause. Serjeant *Chapple* for the Plaintiff. Upon reading the Rule for Defendants to perfect their Bail in four Days, the Court said that the Bail-Bond was

G well

well assigned ; but stay'd Proceedings upon the usual Terms.

Newman *against* Butterworth.

Hill. 8 Geo. II.

Thomson.

Action upon
the Recogni-
zance of Bail
can't be
brought,
pending a
Writ of Error.

JUDgment for the Plaintiff in this Court, the Defendant brings a Writ of Error ; pending the Writ of Error the Plaintiff brings an Action of Debt against the Bail in the Original Action on the Recognizance. Serjeant *Comyns* moved that the Proceedings against the Bail might be staid until the Determination of the Writ of Error. Serjeant *Skinner* for the Plaintiff, insisted that by the Practice of this Court the Plaintiff might proceed to Judgment, but not to take out Execution, therefore if the Bail would stop the Plaintiff, they must give Judgment. *Comyns* said that if they were to give Judgment, they would be deprived of the Benefit of surrendering the Defendant in the Original Action. *Cur'*, The Course of the Court in an Action of Debt upon a Judgment, pending a Writ of Error, is not to stay Proceedings till the Writ of Error is determined, unless the Defendant will give Judgment ; but in an Action upon the Recognizance of Bail, it is otherwise, for

for after Judgment the Bail will be deprived of the Opportunity of surrendering the Defendant; therefore let Proceedings be stay'd upon the Recognizance of Bail until the Determination of the Writ of Error.

Derisley an Attorney *against* De-
lande. East. 12 Geo. II.

Thomson.

ACTION of Debt on a Recognizance of Bail, pending a Writ of Error in the Original Action. Serjeant *Wright* moved that the Proceedings against the Bail might be stay'd. Rule to shew Cause. Serjeant *Eyre* for the Plaintiff; the Plaintiff ought to give Judgment upon a *cessat Executio* till the Writ of Error shall be determined. *Cur'*, The Bail by giving Judgment will be barred from surrendering the Principal. Rule absolute.

No Action of Debt against Bail pending a Writ of Error in the Principal Action.

Flanagan *against* Adey.

Easter 2 Geo. II.

Borret.

DEBT on a Recognizance of Bail, the Writ returnable *Octab' Hil.* Copy served on the Defendant 18th of Jan. and Judgment afterwards signed.

If Debt brought on Recognizance of Bail, Writ should be served four Days before the Return.

The Defendant moved that the Judgment might be set aside, because he was not served with the Writ four Days before the Return. The Court declared that the Writ ought to have been served four Days before the Return, and that the Defendant ought to have as much Advantage on an Action of Debt upon the Recognizance as upon a *Scire Facias*; and therefore set aside the Judgment. *Corbet* for the Plaintiff; *Belfield* for the Defendant.

The like Determination, the Process being served on the Return-Day. *Eyre* for the Plaintiff; *Chapple* and *Corbet* for the Defendant. *Draper* against *Carter* and another Bail of *Cooper*. *East. 4 Geo. II. Cooke.*

Steward *against* Bishop.

Easter 7 Geo. II.

On putting
in one Bail
the Defendant
can't surren-
der.

BAil-Bond to the Sheriff, at the Return of the Writ one Person only entered into a Recognizance of Bail before a Judge, and the Defendant rendered himself to the *Fleet* in Discharge of such Bail; the Plaintiff gave a Rule to the Sheriff to bring in the Body; Motion to stay Proceedings against the Sheriff, but the Court refused to stay Proceedings, holding the Render to

to be insufficient, one Person only being Bail; afterwards two Persons became Bail, and justified; and thereupon Proceedings against the Sheriff were stay'd on Payment of Costs; the Plaintiff insisted that he had been delayed of a Trial, and therefore the Bail ought to be bound for the Debt, and were too late to render, which they denied; the Plaintiff having proceeded against the Sheriff, and not upon the Bail-Bond.

Where the Bail shall not be bound for the Debt though the Plaintiff has lost a Trial.

Smith *against* Randal.

Mich. 8 Geo. II.

Thomson.

DEBT upon a Bail-Bond, the Defendant pleaded *comperuit ad diem*, and Issue is joined upon *Nul tiel Record*; upon the Day given, the Defendant brought in the Record of the Recognizance of Bail, whereby it appeared that the Defendant in the Original Action had put in one Bail only, and surrendered himself. Serjeant *Hawkins* for the Defendant insisted upon this being a complete Appearance and a good Render, and prayed Judgment for the Defendant. *Cur'*, One Bail only being put in is the same as putting in no Bail at all, and as to the Render it is not

Putting in one Bail is the same as no Bail.

Defendant can't surrender till Bail is complete.

good, for the Render cannot be made until the special Bail is complete.

Vanderesk and another *against* Waylet, and Elfe and Lucas his Bail. Trin. 2 Geo. II.

Debt against Bail, Render on Appearance Day after the Rising of the Court, bad.

DEBT on a Recognizance of Bail, the Writ was returnable *quinden' Pas.* On the Appearance-Day after the Rising of the Court, the Defendant was surrendered at a Judge's Chamber. 1 Roll. Abr. 334. Salk. 101. *Ghyde* and *Belfield* for the Plaintiff; *Chapple* and *Eyre* for the Defendant. *Per totam Curiam*, This is a bad Render, and the Bail is liable.

Barrington *against* Sheppard.

Hil. 9 Geo. II.

Cooke.

Time to surrender Principal.

SErjeant *Eyre* moved for three Weeks Time to render the Defendant, this being a Recognizance upon a Writ *de Homine Replegiando*, and not for Payment of Money, and the Defendant being in *Worcester Gaol*. Rule to shew Cause.

Huckle

Huckle against Ambrose:

Trin. 10 Geo. II.

Borret.

MOTION to vacate the Entry of Render at a Judge's Chamber, vacated for not paying the Fees. a *Reddidit se*, in the Bail-Book upon a Render before Mr. Justice *Denton* at his Chambers; the Case was this, *Clendon*, a Bailiff to the Sheriff of *Middlesex*, being one of the Defendant's Bail, brought the Defendant to the Judge's Chamber and surrendered him, and the Clerk made the Entry of the Render in the Bail-Book, and the Judge signed it. *Price* the Tipstaff demanded his Fees of *Clendon* for carrying the Defendant to the *Fleet* Prison, but *Clendon* refused to pay the Fees and went away. *Price* the Tipstaff looking upon this to be a Trick to defraud him of his Fees, and that he was not bound to take charge of the Defendant without being paid his Fees, did not take him into Custody, whereupon the Defendant went at large. Rule to shew Cause. *Chapple* for *Price* the Tipstaff; *Wright* for *Clendon*. *Cur'*, All Renders are supposed to be actually made in Court; the Act of the Judge at his Chambers, is only a Warrant to the Filacer for making the

Entry of the Surrender upon the Roll. It was incumbent upon *Clendon* to pay the Fees, his obtaining this Entry in the Bail-Book without paying the Fees is a Fraud and an Imposition upon the Judge and his Clerk ; therefore let the Entry be struck out. *Faresley* 77. 2 *Keb.* 2.

Calverack and his Wife *against*
Pinhero. Mich. 11 Geo. II.

Two Bail bound by Recognizance in 140 l. Verdict for the Plaintiff against Principal for 300 l. the Plaintiff may proceed against both Bail, for one 140 l. will not satisfy the Recognizance.

ACTION of Assault and Battery, the Plaintiff procured a Judge's Order that the Defendant should be held to Bail for 140 l. the Defendant put in Bail himself in 280 l. and two Sureties in 140 l. each. Verdict for the Plaintiff, and 300 l. Damages ; the Plaintiff brings separate Actions against the Bail. Serjeant *Eyre*, on behalf of the two Bail, moved that on Payment of 140 l. and Costs, Proceedings might be staid, and said it was a joint Recognizance, and the Payment of one Sum of 140 l. would satisfy the Recognizance.

Boote and *Hayward*, Serjeants, for the Plaintiff, produced the Recognizance of Bail, whereby it appeared they were jointly and separately bound. *Cro. Jac.* 320. *Higgins's Case.*

Eyre

Eyre, There is no Difference between a Bond and a Recognizance. 5 *Co.* 86. *Hob.* 2. *Roll. Abr.* 318. *pl.* 11. *Dancers Abr.* 625.

Burnet, *Hob.* 59. *Hobart and Jackson*, 1 *Salk.* 102. *Gerebaldo and Comioni*, *Martin versus Moor*, in *B. R. Webster versus Gray*, *Pasch.* 10 *Geo.* 1. *B. R. Modern Cases*, Printed by Osborn, 234.

Hayward, There is a Difference between a Bond and this Recognizance, in a Bond the Condition is to pay the Money, and if one Obligor pays the Money, the other is discharged, for the Condition is satisfied; in this Recognizance, the Condition is not satisfied until the Damages recovered are paid, or the Defendant surrendered.

Chief Justice, This was never settled before, two Persons are bound jointly and separatly in 140 *l.* each, what is the Condition? that the Defendant shall pay what shall be recovered, or surrender himself to the *Fleet*; we cannot discharge the Actions against the Bail for 140 *l.* each, unless the Condition be performed, which it is agreed is not; by Law the Plaintiff may recover against each for 140 *l.* and can we in an equitable Manner deprive him of the Benefit the Law gives him.

Denton

Denton, It is very plain that the Defendants are separately bound in 140*l.* and the Recovery being 300*l.* and the Condition being that the Defendant shall pay the Damages or surrender himself, we cannot hinder the Plaintiff from proceeding against both, unless the Condition of the Recognizance be performed.

Comyns of the same Opinion, and said the Cases in *B. R.* are not like Cases in this Court.

Fortescue, This is a new Motion, because it was so very plain before no one ever moved it ; they are jointly and separately bound in 140*l.* and are liable to pay what is recovered, as far as the Sum each of them is bound in will go ; and this is according to the constant Practice and common Justice and Reason.

Baron

Baron and Feme.

Mason *against* Burdon.

Mich. 4 Geo. II.

Serjeant *Baynes* moved to discharge the Defendant out of Custody; the Case was this, the Defendant's Wife, when sole, was indebted to the Plaintiff upon Bond; the Plaintiff brought an Action against the Defendant and his Wife, but the Wife died before the Return of the Writ. Serjeant *Birch* for the Plaintiff. *Cur'*, No Judgment being recovered in the Wife's Life-Time, let the Defendant be discharged.

Husband not chargeable with Debt of his Wife while sole, unless Judgment recovered in her Life-Time.

Commitment.

Wright *against* Gambier.

Mich. 6 Geo. II.

Commitment
to the Prison
of the Fleet
and to the
Warden of
the Fleet all
one.

24th of **T**HIS was an Action a-
Nov. gainst the Defendant as
Warden of the *Fleet*, for an Escape ;
and upon a Motion in Arrest of Judg-
ment, *Eyre*, Chief Justice, now gave
the Opinion of the Court, That a
Commitment to the Prison of the *Fleet*
and a Commitment to the Warden of
the *Fleet* was all one, and both good.
Judgment for the Plaintiff.

Conusance.

Chapman *against* Wish.

Trin. 3 Geo. II.

Conusance
claimed by
the Univerfity
of Cambridge
in Replevin.

ADjudged *per totam Curiam*, that
the Univerfity of *Cambridge*, who
claimed Conusance of this Cause, can-
not have it, being in Replevin. Ad-
journed upon Serjeant *Cheshire's* Re-
quest

quest, and the Parties consented to demur, and join in Demurrer *instante*, that the Case might receive a full Determination.

Mich. 4 Geo. 2. Hawkins against the Conufance, insisted that the University could not have it, because they cannot grant a Writ of second Deliverance, and there would be a Failure of Justice. If Goods replevied, the Courts of King's Bench and Common Pleas can grant a *Witbernem*, which the University cannot grant, and so there would be a Failure of Justice. *Rastal* 128. *Dalison* 38. *Ed. 3.* 31. 1 *Inst.* 134.

Serjeant *Chapple, contra.* 4 *Inst.* 327. 14 *E. 4.* 20. b. 1 *Roll Abr.* 486, 489, 498, b. *sect. 2.* *Carth.* 380. 5 *Mod.* 252. 2 *Salk.* 580. *Bro. tit. Cogn'* 23. 9 *H. 7.* 9. *Hern's Pleader* 477. *Reg. brev'* 7. a. *Hard.* 505.

Chief Justice, The University cannot grant a second Deliverance, because it must be directed to the Sheriff, and they cannot direct to him, they cannot hold Plea in Waste, because the Sheriff by Writ *accedat ad locum vastatum*. The Writ of second Deliverance is given by Act of Parliament, and it is there said to whom it shall be directed. 22 *Aff. pl.* 61. *Bro. tit. Cogn'*

Conusance.

Cogn' 38. *De Executione* 21. This Matter requires a great deal of Consideration. If we shall say that the University can grant a second Deliverance, and such Writ must be directed to the Sheriff to deliver the Goods in his Bailiwick, we are extending the Jurisdiction of the Franchise all over the County by Implication, when the University can have no Jurisdiction out of their Franchise.

Fortescue, If the King doth not grant an Adequate Remedy, nay the same Remedy that the Courts of *Westminster-Hall* can give, it is an Argument that the King never intended to grant Conusance of Pleas in such Case. If the Sheriff should refuse to obey a Writ from the University, they cannot grant an Attachment against him, for he is not their Officer. 1 *Bro.* 88. 2 *Ventris* 362. As to the Act of Parliament that confirms the Charter, it only establishes the Charter which was in it self void before, for the King cannot grant a Charter whereby the Subject shall be ousted of any Remedy he has by the Common Law. The University cannot grant a *Capias in Wither-*
nam.

Uterius Concilium.

Hil

Hil. 4 Geo. 2. Argued again. *Eyre* for the Conufance, *Cheshire* againft it.

Trin. 5 Geo. 2. Chief Juftice, There is no Foundation for allowing this Conufance as demanded, the Conufance is granted to the Chancellor, Mafters and Scholars, and the Conufance demanded is to the Chancellor *vel ejus locum tenenti*, and I think the Conufance muft be difallowed.

Price, Juftice, There is fuch a Repugnancy between the Grant of Conufance and the Demand, that we cannot allow it.

Denton, Juftice, of the fame Opinion.

Fortefcue, Juftice, I am not quite fo clear, and it may be capable of this Interpretation, that they may have a Right of Conufance of fuch and fuch Pleas, to be held before fuch and fuch Perfons ; but I am of Opinion we cannot grant them the Conufance as demanded.

All the Court faid there was no need to give any Opinion upon the Point, Whether the Univerfity could have Conufance of Plea in Replevin.

Welles *against* Trahern.

Conufance denied as claimed too late.

THE Plaintiff sued out his Writ of Privilege in *Easter* Vacation 1739, against the Defendant, returnable the 18th of *June* 1739.

Trin. 1739, The Chancellor sent his Letter of Attorney, Certificate and Affidavit of the Defendant's being a privileged Person, and two Counsel were retained to move for Conufance of this Cause, but they did not move it this Term.

12 *September* 1739 the Defendant pleaded.

30 *October* 1739 the Plaintiff replied.

12 *November* 1739 the Claim of Conufance was moved, and a Rule made to shew Cause why the Claim should not be allowed.

20 *November* 1739, Upon the Motion of the Plaintiff's Counsel the Rule was enlarged till the then next *Hilary* Term, when the Matter was argued, and Precedents on each side produced, and Copies of the Charters were ordered to be laid before the Judges, to be considered of, and in the last — Term the Judges were pleased to dis-
allow

allow the Claim because it came too late, viz. after Plea pleaded ; and a Case was cited in *Littleton's Reports* 304, that the Conusance of a Cause could not be allowed against the Privilege of an Attorney, and that an Act of Parliament could not take away the Privilege of an Attorney, without express Words to exclude it.

Conusance not to be allowed against the Privilege of an Attorney.

Chief Justice, gave Judgment.

Claim of Conusance by the University after Replevin and Issue tendered ; no Doubt their Right is such as can never be refused if applied for in Time.

Under the greatest Consideration unanimous not claimed in Time.

The Doctrine advanced must imply before Imparlance, and therefore stronger after Plea pleaded.

If no Limits, they may come after Judgment, which would be exceeding hard after a long Litigation here they Judge by Civil Law and not by Jury.

Such a Jurisdiction so contrary to the Law of the Land, that without an Act of Parliament cannot be established, and it is clear that the King himself cannot create a new Court of Equity, without a Confirmation by Act of Parliament.

Conusance.

Ferne and Manners, Hil. 11 Anna. Conusance denied the University of *Cambridge*, because made six Days after Imparlance, and the Privilege is as great, though not so extensive as *Oxford*.

6 *H. 8. fo. 9. b.* 16 *H. 7. fo. 16. a.* Conusance must be made before Imparlance. *Trin. 12 Geo. 1. Baker and War*, Conusance must be made before Imparlance.

Trin. 1 Geo. 2. Wood and Graham.
Latch 83, 84. Marshal and Allen.

Tenant in Antient Demesne may come after Imparlance or Judgment, and for this Reason, because else he loses his Privilege for ever; Case very different as to the University, they lose no Privilege, but of this particular Action, and may come sooner the next Time. *Hil. 12 Ed. 2.* Scholar a Party, Writ directed to the Barons of the Exchequer, *non obstante quod non clamant, &c.*

This was an Act of Power rather than an Act of Judgment before the Charter *H. 8.* and Statute 14 *Eliz.* and if these Privileges had not been confirmed by Act of Parliament, they would have been invalid.

Aldridge and Stratford.

Second Point.

Un-

Unnecessary to go into, as the Court is of Opinion to disallow the Claim for the first Reason.

But it has been determined *Litt. Conusance*
Rep. 304. and *Bolt's Case, Roll's Abr.* can't be claim-
 409. and *Anderson's Case, 3 Lec.* 149. ed against an
 that Conusance could not be allowed Attorney.
 against an Attorney, and that a Char-
 ter or Act of Parliament cannot take
 away the Privilege of an Attorney,
 without exprefs Words to exclude it.

Gave no positive Opinion as to this Point, but in general, tho' the greatest Regard for the University, yet will always support the Law of the Land and try all by Juries, upon which all our Liberties depend against any particular Jurisdiction whatsoever, where by Law he can.

Ordered the Entry to be, that the Conusance denied, because not claimed in Time.

Costs.

Pells *against* Thomson.

Mich. 14 Geo. II.

Borret.

Proceedings
not to be staid
till Payment of
Costs in a for-
mer Action.

THE Plaintiff brought an Action against the Defendant for holding him to excessive Bail; at the Trial the Plaintiff was nonsuited on full Evidence; the Defendant had 24 *l.* Costs allowed him by the Prothonotary. The Plaintiff afterwards brought a new Action for the same Matter. Serjeant *Prime* for the Defendant moved that Proceedings in this second Action might be staid until the Costs allowed in the first Action were paid. *Cur'*, No such Rule was ever made here or in the King's Bench, except in Cases of Ejectments. No Rule.

Beck an Attorney *against* Monk-
man. Trin. 8 & 9 Geo. II.

Thomson.

Costs of a
Motion in a
former Cause
allowed upon
staying Pro-
ceedings on

THE present Defendant had brought an Action against the present Plaintiff, who for want of a Re-
Payment of Debt and Costs in this Cause.

Replication, signed a *Non Pros*, and had 66s. 8d. Costs allowed him. A Motion was made to set aside the *Non Pros*; the *Non Pros* was held to be regular, but the Rule was silent as to Costs; the present Plaintiff brings an Action of Debt upon the *Non Pros*. *Skiinner* and *Wynne*, Serjeants, moved that Proceedings might be staid on paying the 66s. 8d. with Costs. Rule to shew Cause. *Eyre* for the Plaintiff insisted that the Costs of the Motion in maintaining the *Non Pros*, ought now to be allowed. On full Consideration the Court said that the Costs seemed only to have been forgot to be asked for on that Motion, and that as this was an equitable Motion on the Defendant's Behalf, the Costs of maintaining the *Non Pros* ought to be allowed in this Cause.

Slaughter, an Infant, by Munday
his next Friend, *against* Talbot.

Mich. 13 Geo. II.

Coke.

Prochein lia-
ble to Costs.

VERdict for the Defendant and
20*l.* Costs taxed; the Defendant
made out a *Capias ad Satisfaciendum*
against the Plaintiff, delivered a Copy
of it to the *Prochein Amy*, and De-
manded the Costs of him; the *Pro-
chein Amy* refusing to pay the Costs,
Serjeant *Skinner* moved for an Attach-
ment against him. Rule to shew Cause.
Eyre for the *Prochein Amy*. The
Court (*Denton* being absent) after
some Debate, gave their Opinions *seri-
atim*, that it was the Practice of this
and all the other Courts in *Westminster-
Hall*, that a *Prochein* is liable and
must pay Costs in such Cases. Rule
absolute.

Langdon *against* Vinicombe.

Trin. 7 & 8 Geo. II.

Cooke.

Some of the
Defendants
let Judgment
go by Default,
the others
obtain a Ver-
dict, they shall

ACTION on the Case *sur Assump-
sit* against several Defendants;
some of the Defendants let Judgment
go
have Costs.

go by Default; the others pleaded the General Issue, and upon the Trial had a Verdict. And now the Question was, Whether the Defendants who had pleaded and got a Verdict should have Costs? *Cur'*, they are intitled to Costs.

11 R. 41. *Metcalf's Case.* 2 *Saunders* 216, 217. *Roberts versus Gorden, Lilly's Ent.* 505. *Dyer* 373. *Stat. Gloucester.* 2 *Inst.* 289. 1 *Lev.* 63. *Porter against Harris.*

Bracher against Cotton.

Hill. 10 Geo. II.

Cooke.

A't the Assizes a Verdict was found for the Plaintiff; at a former Assize the Cause had been refer'd by Consent. And now Serjeant *Eyre* for the Plaintiff moved that the Costs of the Reference might be allowed by the Prothonotary. *Rule* to shew Cause. *Chapple* for the Defendant. The Court upon full Debate, and hearing the three Prothonotaries, discharged the Rule, saying the constant Practice had been to disallow Costs in such Cases.

Costs of a Reference by Consent not to be allowed.

Mayor and Aldermen of Nottingham *against* Lambert.

Easter 12 Geo. II.

No Costs after Reference.

NO Costs after Reference at the Assizes. *Skinner* for the Defendant.

Britton *against* Dickenson.

Easter 7 Geo. II.

Of demanding Costs.

THE Demand of Costs must be made at the same Time the Rule is served.

Spencer *against* Learoid.

Mich. 2 Geo. II.

Borret.

Person demanding Costs must shew his Authority.

Motion for an Attachment on the last Day of Term,

A Motion was permitted to be made on the last Day of Term for an Attachment for Non-payment of Costs, but the Party demanding the Costs, not setting out in his Affidavit that he shewed the Defendant his Power or Authority, though he told him of it; No Rule was made.

Doe

Doe *against* Roe.

Hil. 2 Geo. II.

PER Cur', If Costs are demanded by Virtue of a Letter, it is necessary for the Party demanding to shew his Authority; but if the Party demanding be the Attorney in the Cause, he need not shew any Authority; his being the Attorney is sufficient.

Where Party demanding Costs necessary to produce an Authority.

Gynes *qui tam against* Stephenson.

Easter 10 Geo. II.

Cooke.

AN Action was brought for exercising the Trade of a Glover, not having served an Apprenticeship, contrary to the Stat. 18 *Eliz. c. 15. sect. 3.* At the Trial a Verdict was found for the Defendant. And now two Questions arose. 1st Whether the Defendant should have any Costs? 2d If in Case he was intitled to Costs, whether he should be allowed 6 Guineas. He had paid the special Jury who tried the Cause, which special Jury was obtained upon the Defendant's Motion. *Parker* and *Draper* for the Defendant. *Anderson* 116. *Savil* 50, 54. *Eyre* for the Plaintiff, said the Plaintiff would not have been intitled to Costs.

Action *qui tam*, Verdict pro Def', he shall have his Costs.

Chief

Costs of a
special Jury
allowed, ex-
cept the Stri-
king.

Chief Justice, 1st, The Defendant is intitled to Costs, the Plaintiff is a common Informer. 2dly, The Defendant ought to be allowed the Costs of the special Jury, except the Striking.

Cur', All of the same Opinion.

Shingler against Roberts.

Easter 12 Geo. II.

Cooke.

Plaintiff in a
Penal Statute
not to give
Security for
Costs, &c.

ACTION on a Penal Statute for acting as a Commissioner of the Land Tax, not being qualified. Demurrer. The Plaintiff's Attorney had given an Account of the Plaintiff's Place of Abode, &c. pursuant to a Rule of Court. Serjeant *Skinner* moved that the Plaintiff might give Security to answer Costs, in case Judgment should be given for the Defendant. *Cur'*, As there is a real Plaintiff, it can't be done, he has a Right to bring this Action.

Birch

Birch against Daff.

Trin. 3 Geo. II.

TRespass. *Domum fregit ac fe-* Trespass for
nestr' Domus ill' ad valenc' 201. breaking a
& defensacula Domus ill' ad valenc' House, the
101. ad Domum praed' spectan' & per- Windows, &c.
tin' ibidem nuper inuent' fregit & spo- no Costs, de
liavit. No Costs *de Incremento.* Incremento.
The Chief Justice said, That if required at the Trial, he would have certified.

Dixie, Bart. against Somerfield.

Hil. 6 Geo. II. Intr. Trin. 5

& 6 Geo. II. Ro. 706.

Cooke.

TRespass for breaking the Plaintiff's Close, digging up the Soil and throwing down the Gates, Rails and Pales. Verdict for the Plaintiff, Damages under 40 s. and no Certificate. Serjeant Chapple moved that the Prothonotary might allow the Plaintiff Costs *de Incremento*. Rule to shew Cause. Serjeant Eyre for the Defendant. *Cur'*, The Plaintiff is not intitled to Costs *de Incremento*, this is a Trespass committed on the Freehold, and therefore there ought to be a Certificate to intitle the Plaintiff to full Costs

Trespass on a Freehold, no Costs de Incremento without Certificate.

Costs; if there had been an Injury done to a Personal Chattel, a Certificate would have not been necessary.

Arnold *against* Thomson.

Hill. 7 Geo. II.

Borret.

In Trespass where a Damage is done to a Personal Chattel, the Plaintiff shall have full Costs tho' the Damages found be under 40 s.

Trespass for chasing the Plaintiff's Sheep, by which 20 Ewes and 20 Lambs were greatly damaged. Verdict for the Plaintiff, Damages under 40 s. and no Certificate. The Question was, Whether the Plaintiff should have full Costs? *Chapple* for the Plaintiff; *Wynne* for the Defendant. *Cur'*, This is a Damage done to a Personal Chattel, therefore the Plaintiff is intitled to his full Costs. *Cartb.* 225.

Caruthers *against* Lamb.

Mich. 3 Geo. II.

Cooke.

In Trespass where a wrong is done to a Personal Chattel, the Plaintiff shall have full Costs tho' the Damages found be under 40 s.

ACTION of Assault and Battery, and for tearing and spoiling the Plaintiff's Cloaths, *viz.* a Great Coat. Verdict for the Plaintiff at *Cumberland* Assizes, and one Penny Damages given. *Barnes*, Secondary, moved in the Treasury for Costs *de Incremento*, there being no Certificate. The Judges determined that the Plaintiff should

should have Costs *de Incremento*, there being a Wrong done to a Personal Chattel.

Thomlinson *against* White and
Pomeroy. East. 8 Geo. II.
Cooke.

TRespass (*inter alia*) for entering the Plaintiff's House and breaking a Cellar Door. Verdict for the Plaintiff as to the breaking the Door and 6*d.* Damages; as to the Residue of the Trespass the Jury found the Defendant not Guilty, a Doubt arising whether the Plaintiff should have full Costs. *Per Cur'*, He can have no more Costs than Damages, this is not an Injury done to a Personal Chattel, the Door is fixed to the House; the Freehold might have come in Question, and therefore a Certificate was necessary. *Chapple* for the Defendant; *Eyre* for the Plaintiff.

Trespass for
breaking a
Cellar-Door,
no more Costs
than Dama-
ges.

Ibbotson

Ibbotson *against* Brown.

East. 11 Geo. II.

Thomson.

No more Costs
than Damages
in Trespas
notwith-
standing the
new Assign-
ment.

Jury may give
what Costs
they please
tho' Damages
under 40 s.

Trespas *Quare Clausum fregit*; the Defendant pleaded the common Bar; the Plaintiff made a new Assignment, and prayed Damages; the Defendant pleaded not Guilty to the new Assignment. Verdict for the Plaintiff, 5 s. Damages, and 40 s. Costs; the Judge had made no Certificate, *vide* Stat. 22 & 23 Car. 2. c. 9. Serjeant *Bootle* moved that the Prothonotary should allow the Plaintiff full Costs. 2 Lev. 234. *Prime* for the Defendant. *Cur'*, Here is no special Pleading, the Replication only ascertains that which was short in the Declaration, it amounts to no more than the General Issue. *Cur'* unanimous, no Costs *de Incremento*; it was also moved that the Associate might strike out the 40 s. Costs given by the Jury, and make it 5 s. *Cur'*, The Stat. 22 & 23 Car. 2. c. 9. only restrains the Court from giving Costs *de Incremento*; the Jury may give what Costs they please.

Denny

Denny against Wiggs.

Mich. 10 Geo. II.

Cooke.

ACTION for Words, viz. that the Plaintiff sold his Goods by false Weights, whereby he lost several Customers, naming them; a General Verdict for the Plaintiff, and 10s. Damages. *Cooke*, Prothonotary, doubted whether he could allow the Plaintiff any more Costs than Damages. Serjeant *Prime* moved that the Prothonotary should allow the Plaintiff full Costs. The Court made a Rule to shew Cause, which was afterwards made absolute, *Fortescue* and *Denton* only present. *Cro. Car.* 140, 163, 307.

Full Costs in Slander, tho' Damages under 40s. special Damages being laid.

Dover against Robinson.

Easter 13 Geo. II.

Thomson.

ACTION for scandalous Words, *ad dampnum* Tenthousand Pounds, the Defendant justified; the Jury found for the Plaintiff 1d. Damages and 40s. Costs; the Prothonotary allowed full Costs, and the Defendant was taken in Execution. Serjeant *Agar* moved that

No more Costs than Damages in Slander, tho' a Justification pleaded.

Capias ad Satisfaciendum might be set aside with Costs, that Restitution might be made to the Defendant, insisting that the Plaintiff ought to have no more Costs than Damages. Rule to shew Cause. *Prime* for the Plaintiff. *Cur'* The Plaintiff not having proved any special Damage, he is not intitled to full Costs, the Pleading a Justification does not alter the Case, therefore let the Money levied (the Plaintiff deducting 2 *l.* 1 *d.*) be returned to the Defendant, let the Plaintiff pay Costs, and by Consent the Defendant is to bring no Action.

Watkinson *against* Swyer & ux'.
East. 1 Geo. II.

Foley.

Tho' Damages under 40 s. Jury may give more Costs than Damages.

MOTION for Judgment upon an Issue of *Nul tiel Record*, of a Judgment in an Action of Debt brought upon the Judgment; the Original Action was Trespass; the Jury had given 3 s. 4 *d.* Damages and 40 s. Costs, and the Prothonotary had allowed 6 s. 8 *d.* for the *Capiatur* Fine, in all 50 s. Serjeant *Chapple* insisted that the Judgment was void, because the Jury had allowed more Costs than Damages; but the Court over-ruled him; then he

2

shewed

shewed a Variance between the Issue delivered and the Record, in the Defendant's Name, *viz.* *Eusterse* in the Issue, and *Curtefs* in the Record. Rule for Judgment *pro Def. Nisi Causa.* *Postea* made absolute on the Secondary's Certificate.

Wheatly against Church.

Hil. 1 Geo. II.

THE Court was moved for Directions to the Prothonotary in the taxing Costs; the Case was this, The Plaintiff was an Executor, the Testator had taken out Process against the Defendant in his Life-time, and after his Death the Executor recovered against the Defendant, and now moved the Court that the Prothonotary should allow him the Costs his Testator had been at; this Matter was talk'd over between the Judges and Prothonotaries in the Treasury, and it was agreed that Costs should not be allowed for the Process taken out in the Testator's Life-time.

Executor shall not be allowed Costs of Process sued out by the Testator.

Byrom, Executor *against* Bates.
Hil. 1 Geo. II.

Foley.

Debt by Executor for Rent due in his own Time, Verdict *against* him, whether he shall pay Costs.

DEBT brought by an Executor for Rent due after the Death of the Testator, the Executor declared in the *Detinet*; and upon Trial the Defendant had a Verdict; and now *Whitaker* moved the Court for Directions to *Foley* the Prothonotary to allow the Defendant his Costs. *Adjournatur. Vide Sir Thomas Jones, Shattle versus King, fo.*

Lamley and his Wife Executrix
against Nichols.
Mich. 4 Geo. II.

Borret.

Costs against an Executrix on a Non Pros for Default of a Replication.

DEclaration by Baron and Feme Executrix; the Defendant pleads, and for Default of a Replication signs a *Non Pros*; and Costs were allowed, although the Wife was an Executrix.

Atkins, Administrator of Bassett
against Spence. Mich. 4 Geo. II.
Foley.

TROVER brought by an Administrator. The Possession, Loss and Trover were in the Life of the Intestate, and the Conversion after his Decease; the Plaintiff upon Trial was nonsuited, and the Question was, Whether he should pay Costs? *Baynes* for the Plaintiff; *Cheshire* for the Defendant. *Balles* versus *Delander*, Trin. 2 Geo. in B. R. Adjourned. *Postea* the whole Court declared that the Plaintiff should pay Costs, but directed that in taxing the Costs the Plaintiff should not pay the Costs of the Motions, because the Court had upon the first Motion doubted.

Administrator nonsuited upon Trial in Trover, the Possession Loss and Trover in the Time of Intestate, the Conversion in his own Time, he shall pay Costs.

Parks Executrix qui tam against
Hundred de Ashendon in Com'
Bucks. Mich. 6 Geo. II.

THIS was an Action on the Statute of Hue and Cry, brought by the Plaintiff as Executrix; the Plaintiff was nonsuited at the Assizes, before *Reynolds*, Chief Baron. Serjeant *Chapple* moved (Chief Justice absent) *Where Executrix shall pay Costs on a Nonsuit at Trial upon the Statute of Hue and Cry.*

absent) that the Prothonotary should allow the Defendants their Costs, notwithstanding that the Plaintiff was an Executrix; this Action being wrong upon the Face of it, an Executrix suing for a Robbery committed upon her Testator, and was purely Vexatious. *Quid Posse.*

Bangs, Executor, *against* Bangs.
Hil. 6 Geo. II.

Executor nonsuited at Trial on an Indebitatus Assumpsit for Money received after the Testator's Death, shall pay Costs.

THE Plaintiff as Executor brought an *Indebitatus Assumpsit* for Money had and received after the Testator's Death, and at the Trial of the Cause was Nonsuited; it being questioned whether the Plaintiff should pay Costs, it was held by the Court that he should pay Costs.

Hammond *against* Woolmer.
Hil. 8 Geo. II.

Executor intitled to Costs that were payable to the Testator by Rule of Court.

Thomson.
UPON the Trial, the Plaintiff and Defendant entered into a Rule by Consent, that a Verdict should be found for the Plaintiff, which was only to stand as a Security; and a Point of Law was reserved for the Opinion of the Lord Chief Justice, and if

if he should be of Opinion for the Plaintiff, then the Verdict was to stand, and if he should be of Opinion for the Defendant, then the Verdict was to be void, and the Plaintiff was to pay the Defendant the Costs of a Nonsuit. The Rule of *Nisi Prius* was afterwards made a Rule of this Court; and by Order of the Chief Justice the Point reserved upon the Trial was put into the Paper and argued in Court. The Court was of Opinion with the Defendant; whereupon a Rule of Court was made, that the Verdict should be set aside, and that the Plaintiff should pay the Defendant the Costs of a Nonsuit to be taxed. The Costs were taxed, after which the Defendant died, his Executor demands the Costs of the Plaintiff, and for Non-payment, moved for an Attachment. This was opposed by Serjeant *Eyre* for the Plaintiff, who insisted that the Defendant was not intitled to the Costs, and that by the Death of the Defendant the Cause was at an End. But the Court was of Opinion that the Executrix was well intitled to the Costs, and granted an Attachment against the Plaintiff for not paying them.

Thornton *against* Hayes.
Easter 9 Geo. II.

Thomson.

Costs payable
by Rule of
Court to
Defendant
must be paid
to his Admin-
istratrix in
Case of his
Death.

THE Plaintiff by Rule of Court was to pay Costs to the Defendant; the Defendant died before they were paid; the Defendant's Administratrix gave a Letter of Attorney to a third Person to demand those Costs, who accordingly did demand the Costs, and the Plaintiff refused to pay them; but upon Affidavit of the Demand and Refusal, and that the Letters of Administration and Letter of Attorney were shewed to the Plaintiff at the Time of the Demand; the Court granted an Attachment against him, upon the Motion of Serjeant *Belfield*.

Creek and another Administrator
against Pitcairn.

Trin. 13 Geo. II.

Cooke.

Administrator
non-suited on
Prohibition
brought by
himself shall
pay no Costs.

SUIT in the Consistory Court of *Norwich* against the Plaintiffs as Administrators, for Tithes due in the Intestate's Life-Time; the Plaintiffs alleging a *Modus*, obtained a Prohibition

bition in this Court, and Issue was thereupon joined ; the Defendant entered the Record, and proceeded to Trial at the last *Lent* Assizes, at which the Plaintiffs not appearing were Nonsuited. Serjeant *Prime* moved for Costs. The Cause of this Action, *viz.* the Suit in the Spiritual Court, arose in the Plaintiff's own Time ; and where an Executor or Administrator sues in Debt, Trover or any other Action arising in his own Time, he shall pay Costs if he fails. In Prohibition the Plaintiffs are to be considered as mere Defendants, as opposing the Original Suit, *viz.* the Libel, and where an Executor or Administrator is Defendant, and a Judgment is recovered against him, he shall pay Costs. That Stat. 3 *E. 6. c. 13. §. 14.* gives double Costs if the Suggestion be not proved in six Months, and Executors and Administrators are excepted by the Statute. The Plaintiffs not appearing at the Trial, were Nonsuited by their own wilful Default ; and in Cases of wilful Defaults, as for not Replying, not going to Trial pursuant to Notice, Executors and Administrators shall pay Costs. If the Plaintiffs were not to pay Costs in this Case, it would be of very mischievous Consequence ; for in the like Case the Tithe

must either be lost or a Hazard run of spending a considerable Sum without any Hopes of Recompence. *Boote* for the Plaintiffs, insisted that the Tithes being due in the Intestate's Life-time, the Plaintiffs were not liable to Costs, that though the Suit in the Spiritual Court was commenced after the Intestate's Death, the suing out a Prohibition was only to protect Assets, and was no more than if they had brought a Writ of Error, in which Case they should have paid no Costs. As to double Costs in the Stat. of *E. 6.* for not proving the Suggestion in six Months, the Defendant having obliged the Plaintiffs to declare, he has waived his Right to their Costs, and the Proof of the Suggestion. *Cur'*, As the Demand accrued in the Intestate's Life-time, and as the Plaintiffs have declared as Administrators, and could not declare otherwise, they must not pay Costs.

Decia.

Declaration.

Stewart *against* Harding.

Mich. 4 Geo. I.

A Greed by the whole Court on the Report of the Prothonotaries, that if the Plaintiff be not called upon by Rule to declare, he hath all the Vacation of the second Term to declare in. Plaintiff has the whole Vacation of the second Term to declare in, if not called upon by Rule.

Lim *against* Smith.

Mich. 6 Geo. II.

HELD that the Plaintiff hath two Terms to declare in after Bail put in and complete. *Chapple* for the Plaintiff; *Eyre* for the Defendant. Plaintiff hath two Terms to declare after Bail complete.

Bartholomew an Attorney *against*

Goulding. Mich. 5 Geo. II.

Borret.

WRIT returnable in *Easter* Term, the Plaintiff entered an Appearance for the Defendant, and Notice of Declaration on the third Term, too left late.

Declaration.

left a Declaration in the Office; in *Trinity* Term he gave the Defendant Notice of the Declaration, and signed Judgment by Default; the Judgment being set aside for insufficient Notice of the Declaration, the Notice not expressing the Nature of the Action, the Plaintiff in *Michaelmas* Term gave Notice *de novo* of a Declaration being left in the Office as of the precedent *Easter* Term, gave a Rule to plead, and for want of a Plea signed Judgment a second Time. Serjeant *Belfield* moved that the Judgment might be set aside, for that this Writ being returnable in *Easter* Term, and the Notice of the Declaration being given in *Michaelmas* Term, from which Time only the Declaration could be deemed well delivered, the Defendant was out of Court, and the Declaration came too late. Rule to shew Cause. *Chapple* and *Birch* for the Plaintiff, *Cur'*, The Rule of *Mich. primo Geo. 2.* is express, that from the Time of giving Notice of the Declaration the Declaration shall be deemed well delivered; this Judgment must therefore be set aside; if on setting aside the first Judgment the Plaintiff had prayed that the Defendant should accept Notice of a Declaration
as

Declaration
well deliver-
ed from Time
of Notice on-
ly.

Declaration.

123

as of the last Term, we would have obliged him to have done it.

Ibbotson *against* Cooke.

Trin. 5 & 6 Geo. II.

Borret.

DEclared by the Court as a stand-
ing Direction, that every Demand
of a Declaration, Plea, &c. in Writing,
be made by eight o' Clock at Night
the Day before Signing Judgment.

Demand of
Declaration,
Plea, &c. to
be made be-
fore eight at
Night.

Bayly *against* Dennis.

Trin. 8 & 9 Geo. II.

Cooke.

SErjeant *Hawkins* moved that the
Judgment might be set aside, be-
cause the Declaration was delivered at
Nine o'Clock at Night, before the *Es-*
soin Day. Rule to shew Cause. Ser-
jeant *Eyre* for the Plaintiff said that
the Defendant's Attorney had applied
to the Plaintiff's Attorney for Time to
plead, and had obtained a Rule for the
Plaintiff to shew Cause why the De-
fendant should not have Leave to plead
double. *Cur'*, The Declaration being
delivered after * Eight o'Clock at Night,
the Defendant is intituled to an Impar-
lance,

Declaration
delivered af-
ter eight o'
Clock at
Night.

* Note : The
Hour was af-
terwards made
Nine.

Declaration.

lance, and therefore the Judgment must be set aside; but the Plaintiff's Attorney offering to pay the Costs of the Motion, the Court ordered the Defendant to plead double in a Week.

Elwood *against* Elwood.
Trin. 6 & 7 Geo. II.

Cooke.

Declaration
must be de-
manded of the
Agent in
Town.

MOTION by Serjeant *Chapple* to set aside a *Non Pros* signed for want of a Declaration, because no Declaration was demanded of the Agent in Town. Rule to shew Cause. Serjeant *Eyre* for the Defendant. On shewing Cause it appeared that it had been agreed that the Declaration should be delivered, and called for by the Attornies in the Country, and the Declaration had accordingly been demanded of the Attorney in the Country. *Cur'*, No Consent of Country Attornies shall alter our Practice, and the Rule is prudently made. All these Transactions of delivering Declarations, Pleas, &c. ought to be done here in Town by the Agents.

Taylor

Taylor *against* Lawson.

Mich. 9 Geo. II.

Borret.

THE same Resolution (the Chief Justice and *Denton* absent), but Costs to attend the Event, owing to Distinction, which Serjeant *Chapple* made, because Notice of setting off a Debt was given, which must be proved in the Country.

Porter, Jun. *against* Barnes.

East. 3 Geo. II.

JUDgment set aside, the Notice of Declaration the Declaration being given on the Ninth of *February*, and the Term ending the Twelfth. Held *per Cur'* the Declaration must be delivered four Days before the End of the Term exclusive, and therefore this Declaration should have been delivered the Eighth of *February*. *Chapple* for the Plaintiff; *Eyre* for the Defendant.

White

Declaration.

White *against* Edwards.

Hil. 5 Geo. II.

Foley.

Of delivering
Declaration
when Defen-
dant's Attor-
ney can't be
found.

IF the Plaintiff does not know the Defendant's Attorney, and can't find him on inquiring with the Filacer of the County, he must leave the Declaration in the Office, and not at the Defendant's House or with the Defendant, this being the Practice in Matters of Pleading ; but Notice of Trial or of executing a Writ of Inquiry, if the Defendant's Attorney can't be found, ought to be given to the Defendant himself, or at least left at his House, and not in the Office.

Of Notice of
Trial and In-
quiry in the
like Case.

Turner *against* Shrimpton.

Hil. 13 Geo. I.

Cooke.

Declaration
delivered to
Defendant,
his Attorney
being known,
bad.

COPY of Declaration delivered to the Defendant, his Attorney being known, held to be a bad Delivery.

Wyat *against* Bacon.

Mich. 2 Geo. II.

THE Declaration was delivered irregularly ; the Defendant did not move against the Irregularity until after the Writ of Inquiry was executed. Agreed *per Cur'*, That the Defendant came too late ; yet in this Case agreed to set aside the Judgment on Payment of Costs. *Et per Cur'*, When any Irregularity happens, the Party injured should take the first Opportunity of applying to the Court.

Irregularity in delivering the Declaration too late to be complained of after Inquiry executed.

Smith *against* Jenks.

Hil. 5 Geo. II.

Cooke.

8th Feb. **S**erjeant *Chapple* moved to set aside a Judgment for Irregularity ; the Process was returnable on the second Return of last Term, a Declaration of the last Term was left in the Office before the *Essoin* Day of this Term, but no Notice was given of it till the third Day in this Term ; the Serjeant produced an Affidavit of Notice of his Motion ; but it appearing by this Affidavit, that Notice of Executing a Writ of Inquiry was on the first Day of

Irregularity in delivering Declaration too late to be complained of the Day before the Inquiry to be executed.

Declaration.

of *February* instant, for to *Morrow*; being the Ninth of *February*, the Court would not receive the Motion, because the Defendant came too late and might have applied sooner.

Heber an Attorney *against* King
Hil. 2 Geo. II.

When the Plaintiff appears for the Defendant, Notice must be given of the Declaration tho' the Defendant be an Attorney.

THE Plaintiff having entered an Appearance for the Defendant, who is a practicing Attorney, delivered a Declaration to him at his Chambers, but did not leave a Declaration in the Office, and give the Defendant Notice thereof in Writing, pursuant to the Rule.

On a Motion to set aside the Proceedings, the Plaintiff insisted that as the Defendant was a practicing Attorney, there was no Occasion for such Notice, because he understood the Declaration. On hearing Counsel on both sides, the Court was of Opinion that Notice ought to be given to an Attorney as well as to a common Person.

Poulter against Skynner.

Mich. 4 Geo. II.

Foley.

THE Defendant lodged for three or four Days in *Bishopsgate-street*, though his House and Place of Residence was at *Dorchester*; while he lodged in *Bishopsgate-street* he was served with a Common Process; he went Home in a few Days: Notice of a Declaration was left at the Lodgings in *Bishopsgate-street*, and Judgment was signed against him as in a Town Cause, for not pleading in four Days. Serjeant *Corbet* for the Defendant moved the Court that the Judgment might be set aside for want of eight Days Time to plead. Rule to shew Cause. Serjeant *Chapple* for the Defendant, insisted that when Notice of the Declaration was left at the Lodging in *Bishopsgate-street*, the Defendant's Place of Residence was at *Dorchester*. The Court held that the Rule for establishing the Practice of the Court upon the late Act of Parliament, and the Rule for obliging Defendants to plead forthwith, must be consistently and conformably construed, and that Notice of the Declaration ought to follow the Service

K of

Declaration.

of the Process; and therefore discharged the Rule for shewing Cause why the Judgment should not be set aside.

Hale *against* Breedon:

Easter 6 Geo. II.

Thomson.

Notice to Defendant's Attorney of a Declaration being left in the Office, should be in Writing.

Serjeant *Chapple* moved to set aside a Judgment; the Irregularity complained of, was that though the Plaintiff's Attorney knew where the Defendant's Attorney lived, he did not deliver him the Declaration, or give him any Notice of it. Serjeant *Darnal* for the Plaintiff, We told the Defendant's Attorney's Clerk that we had left the Declaration in the Office, which Clerk afterwards told the Plaintiff's Attorney that he had informed his Master that the Declaration was left in the Office. *Cur'*, Notice by Word of Mouth is nothing, but the Clerk's telling the Plaintiff's Attorney that his Master knew of the Declaration's being in the Office, seems sufficient, however as it is not a very clear Case let the Judgment be set aside on pleading an Issuable Plea, and taking short Notice of Trial, but let the Costs attend the Event of the Suit.

Lane

Declaration.

131

Lane *against* Elliot.

Mich. 8 Geo. I.

Foley.

SEttled upon hearing Counsel on both Sides, that Notice of a Declaration being left in the Office must be given before a Rule to plead be given. Notice of Declaration must be given before Rule to plead.

Gray *against* Saunders.

Hil. 8 Geo. II.

Borret.

NOTICE of a Declaration being left in the Office must be given before a Rule to plead is given. Notice of a Declaration must be given before a Rule to plead be given.

Parsons and others *against* Smith.

East. 4 Geo. II.

Borret.

SEttled by the Court that Notice of a Declaration being left in the Office must specify the Nature of the Action, *i. e.* whether it be in Debt or Case, &c. The following Notice was held to be insufficient, *viz.* "M. G. Take Notice there is a Declaration left in Prothonotary Borret's Office in the King's Bench Walks in the

Declaration.

“ *Temple*, which is prosecuted by
 “ *A. B. C. D.* and *E. F.* against you
 “ the Defendant, purporting that you
 “ are indebted to them in 4*l.* for
 “ Coachmaker’s Work for you by
 “ them done, and also on a *Quantum*
 “ *Meruit*; And that you are farther
 “ indebted to them in the Sum of 11*l.*
 “ for the Hire of Coaches, Chariots
 “ and Hearses for a long Space of
 “ of Time, to which Declaration un-
 “ less you plead, &c.” *Hawkins* for
 the Defendant; *Baynes* for the Plain-
 tiff.

The like Resolution, *Birch* for the
 Defendant; *Urlin* for the Plaintiff. *Ball*
 against *Merrick*, *Eodem Termino*. *Cooke*.

Turner, Administrator, *against*
 Bownus. East. 2 Geo. II.

Notice that a Declaration for Goods sold and delivered was left in the Office, when there was a Count also in the Declaration for Money lent, good. *Belfield* moved to set aside the Judgment signed in this Cause for Irregularity; the Irregularity complained of was that the Defendant being served with Process, pursuant to the Statute for preventing frivolous and vexatious Arrests, and an Appearance being entered by the Plaintiff, the Plaintiff gave the Defendant Notice that a Declaration was left in the Office, and the Notice mentioned that the Declaration was

was for Goods sold and delivered and Materials found; whereas there was a Count in the Declaration for Money lent, which was not mentioned in the Notice. Upon reading the Rule of Court for settling the Practice of the Court pursuant to that Statute, which is, that the Plaintiff shall give Notice of the Nature of the Action; the Court held the Notice to be good, and said it was not necessary to set forth the whole Declaration, and would not so much as make a Rule for the Plaintiff to shew Cause why this Judgment should not be set aside.

Skin against Gwinnet.

Easter 4 Geo. II.

CUR', In giving Notice of a Declaration left in the Office, it is only necessary to mention the Nature of the Action, *viz.* in Debt or in Case without mentioning for what, for that will appear by the Declaration it self.

Notice of a Declaration need only mention the Nature of the Action.

Declaration.

Hannaford *against* Holman.

Easter 7 Geo. II.

Borret.

Notice of Declaration
without a
Date, bad.

Notice of Inquiry for
such an Hour
or as soon after
as the Sheriff
could attend,
bad.

SErjeant *Eyre* moved that the Judgment and Writ of Inquiry in this Cause might be set aside for the following Irregularities; 1st Notice was given that the Declaration was left in the Office, and that the Defendant was to plead in eight Days, which Notice was without any Date. 2dly, The Notice of executing the Writ of Inquiry, was that the same would be executed at Ten o'Clock in the Forenoon, or as soon after as the Sheriff would attend. Rule to shew Cause. *Chapple* for the Plaintiff. *Cur'*, The Notice of the Declaration ought to have had a Date, and that Defect is not to be supplied by Affidavit; the Notice of executing the Writ of Inquiry is also bad; therefore the Rule must be made absolute;

Braty

Braty *against* Baldock.

Easter 12 Geo. II.

Thomson.

Serjeant *Skinner* moved that the Judgment in this Cause might be set aside; the Plaintiff had delivered the Declaration *de bene esse*, and gave the Defendant Notice to plead in four Days (which Notice was unnecessary as the Declaration was delivered *de bene esse*) when the Defendant was intitled by the Rule of the Court to eight Days Time to plead. Rule to shew Cause. *Wright* for the Plaintiff, The Plaintiff did not sign his Judgment till the eight Days were expired. *Cur'*, The Notice was bad, and therefore the Rule must be absolute.

Declaration with Notice to plead in four Days when Defendant had eight Days to plead, bad.

Pritchard *against* Lewis.

Hil. 13 Geo. II.

WRIT returnable in *Easter* Term last; the Plaintiff entered Appearance for the Defendant according to the Statute, and left a Declaration in the Prothonotary's Office, but lay still all *Trinity* and *Michael-*

Declaration only well delivered from the Time of Notice.

K 4

mas

Writ returnable in Easter Term, Declaration delivered the Day before the Effoin-Day of Hilary Term too late, the Defendant being then out of Court.

Declaration.

mas Terms, and gave the Defendant no Notice of the Declaration being left till the Day before the *Essoin* Day of this Term; the Defendant moved to stay Proceedings which was ordered accordingly, the Declaration being to be deemed well delivered from the Time of the Notice only, and consequently this was too late, the Defendant being out of Court. *Hayward* for the Plaintiff; *Boorle* for the Defendant,

Watson against Cordwell.

Trin. 2 & 3 Geo. II.

Upon a common *Clausum fregit* the Plaintiff may declare in any County.

BRanthwayte moved to set aside a Judgment for Irregularity; the Irregularity complained of was, that the Defendant was served with a Copy of Process directed to the Sheriff of *Surry*, and thereon the Plaintiff had entered an Appearance for the Defendant, and declared in *Middlesex* upon a Bail-Bond; the Writ was a *Clausum fregit*, and he insisted the Plaintiff should declare in *Surry*. Upon hearing *Eyre* for the Plaintiff, the Court was of Opinion that the Judgment was regular, and that the Plaintiff might declare upon a *Clausum fregit* in any County, and that the Statute to prevent frivolous and vexatious Arrests, made
no

no Alteration, but that when the Appearance was entered by the Plaintiff for the Defendant, it was to all Intents and Purposes the same, as if the Defendant himself had entered the Appearance, that before the making this Act the Plaintiff might have declared in any County upon a common *Clausum fregit*, for that Process was only to bring the Party into Court.

Holmes *against* Small.

Mich. 4 Geo. II.

Cooke.

THE Plaintiff sued out a Writ with an *Acetiam* in Debt, and declared in Case; and the Question was, Whether the Plaintiff could declare in any other Action than Debt? On hearing Counsel on both Sides, agreed *per Cur'*, that the Writ was a *Clausum fregit*, and by the Course of the Court upon a *Clausum fregit* the Plaintiff may declare in any County or for any Cause of Action. Had this been a *Præcipe quod reddat*, the Plaintiff could not have declared in any other Action than Debt, except where a Declaration is delivered by the By, but in that Case the Plaintiff must have delivered a Declaration in the Original Action, before

On a *Clausum fregit* with an *Acetiam* in Debt, the Plaintiff may declare in any County and for any Cause of Action.

Aliter on a *Præcipe quod reddat*, except he declare by the By, and then must first declare in Debt.

Declaration.

before he could deliver a Declaration by the By.

Hickeringil *against* Knight, in Case.

The same *against* The same, in Debt. Mich. 6 Geo. II.

Thomson.

On a Clausum fregit with an Acetiam the Plaintiff may declare in any Action.

A *Clausum fregit* with an *Acetiam* in Case, and another *Clausum fregit* with an *Acetiam* in Debt; the Defendant had signed a *Non Pros* in each Action for want of a Declaration, the Plaintiff had delivered a Declaration in Covenant. Serjeant *Girdler* for the Plaintiff moved that one of the *Non Proffes* might be set aside on Payment of Costs, and that the other might be set aside as Irregular. Rule to shew Cause. *Darnal* for the Defendant, We did not know upon which Writ the Declaration in Covenant was delivered; besides Actions have been brought on the Judgments upon the *Non Proffes*, Declarations delivered and Judgments signed thereupon by Default, five Days after which, and not before, this Application was made. *Cur'*, As a Declaration was delivered though in Covenant, and foreign to both Writs, 'twas good as to one, both Writs being *Clausum*

sum fregits, and not special, and as the Plaintiff did not say upon which it was delivered, the Defendant had his Election to take his *Non Pros* on either. The Court would therefore have made the Rules absolute, but in Regard the Plaintiff did not apply till after Judgments were signed in the Actions upon the *Non Proffes*, they discharged the Rule.

Irregularity in a Non Pros too late to be complained of after Judgment in an Action thereupon.

Ramsberry *against* Hoare.
East. 4 Geo. II.

Cooke.

DEBT on a Bond against an Executor, Declaration in the *Debet* and *Detinet*, Plea *Plene administravit*, Verdict for the Plaintiff. *Belfield* moved in Arrest of Judgment. *Chaple* for the Plaintiff said it being after Verdict was helped by the *Oxford Act* 17 Car. 2. 1 Lev. 224, 250. *Cases in Law and Equity* 356. *Allen* 75. *Sid.* 379, 342. *Cur'*, No Rule.

Declaration against an Executor in the *Debet* and *Detinet* good after Verdict.

Har-

Harvey, Administrator, *against*
Harley. Mich. 5 Geo. II.

Cooke.

Declaration
by an Admin-
istrator in
the Debet and
Detinet.

DEBT by an Administrator, Declaration in the *Debet* and *Detinet*, Plea a Release, Replication, General Demurrer and Joinder. Objection that the Declaration was in the *Debet* and *Detinet*. *Postea* the Plaintiff's Attorney moved in the Treasury to amend on Payment of Costs.

Anonymus.

Mich. 6 Geo. II.

Declaration
by Executor
in the Debet
and Detinet
good after
Verdict.

24 Nov. **M**R. Justice *Fortescue* reported a Case, *Burland and Filer*, *Pasch* 11 Geo. 1. where it was Resolved by all the Judges in the Court of King's Bench, that a Declaration in the *Debet* and *Detinet* at the Suit of an Executor is good after a Verdict. *Note*; The same Case is reported by the Name of *Newland and Filer*, in the *Modern Cases in Law and Equity* 356.

Sherley

Shirley, Administrator, *against*
Harvey. East. 6 Geo. II.

Cooke.

DEBT by an Administrator, Declaration in the *Debet* and *Detinet*. The Defendant demurred; the Plaintiff joined in Demurrer. Judgment for the Plaintiff; it is helped by the *Oxford Act*, and is the same as if after Verdict. *Hawkins* for the Defendant; *Eyre* for the Plaintiff.

Declaration
by an Administrator in the
Debet and
Detinet.

Tasker one, &c. *against* Hutchins.
Mich. 4 Geo. II.

Serjeant *Chapple* moved that Proceed-
ings might be staid, the Plaintiff had
sued out an Attachment of Privilege *de*
placito debiti, and declared in Case;
and it was insisted upon, that he should
declare in Debt before he could deliver a
Declaration by the By in Case, and no
Declaration in Debt had been delivered.
Upon hearing *Baynes* for the Plaintiff,
Cur', Had the Writ been a *Clausum*
fregit the Plaintiff could have declared
in any Action; but this Attachment is
in the Nature of a special Original in
Debt. And the Plaintiff must declare
in the original Action of Debt before
he

On an Attachment of Privilege *de Placito debiti*, the Plaintiff can't deliver a Declaration by the By in Case till he has declared in Debt.

Declaration.

he can deliver a Declaration by the By in Case. So a Rule was made to stay the Plaintiff's Proceedings.

Wreeke and his Wife *against* Robins. Mich. 10 Geo. II.

Cooke.

On an Action by Husband and Wife the Husband can't deliver a Declaration by the By at his own Suit alone.

THE Plaintiff delivered a Declaration in the Original Action at the Suit of himself and Wife, and another by the By at the Suit of himself alone. Motion to stay Proceedings on the Declaration at the Suit of the Husband alone. *Chapple* for the Defendant said that by the Practice of the Court a Declaration may be left by the By the first Term at the same Person's Suit, but not in any other Action; and in this Case the Action is at the Suit of the Husband and his Wife, and there is no Process at the Suit of the Husband alone; therefore the Defendant is not obliged to receive this Declaration by the By. *Eyre* for the Plaintiff said that when the Defendant was in Court he might be declared against at any Person's Suit, but this was denied by the whole Court; *Eyre* then insisted that the Plaintiff and his Wife were the same Person. To this the Court said that so they were as to some Purposes, but

but in this Case they were not; for in the Action at the Suit of the Husband and his Wife, the Damages would have survived to the Wife in Case the Husband had died, but in the Action at the Suit of the Husband alone, the Damages would not have survived to the Wife upon the Death of the Husband. Sir *George Cooke*, Deputy Prothonotary, said that by the Practice of the Court the Plaintiff may the first Term deliver to the Defendant as many Declarations by the By as he would, and that upon producing a Writ at any other Person's Suit, and delivering a Declaration, the Defendant was obliged to receive it, and the Plaintiff might proceed against the Defendant thereon. This, *Thomson* the Prothonotary and all the Secondaries denied to be the Practice of this Court, and so did all the Practicers that were then in Court, (*Borret*, Prothonotary, absent.) The Court made a Rule to stay the Plaintiff's Proceedings on the Declaration delivered by the By at his own Suit alone.

Hand

Hand, an Attorney, *against* Willet.
Trin. 14 & 15 Geo. II.

Thomson.

Declaration
may be deli-
vered by the
By in the same
Term, tho'
Debt and
Costs on the
first Declara-
tion are paid.

Serjeant *Belfield* moved that Proceed-
ings might be staid on a Declaration
delivered by the By, for that after the
Debt and Costs on the first Declaration
were paid, the Plaintiff delivered this
Declaration by the By, in the same
Term with the first Declaration. Rule
to shew Cause. *Urlin* and *Willes* for
the Plaintiff shewed for Cause that a
new Process had been sued out to
warrant the second Declaration, where-
upon the Court discharged the Rule,
and said that the Defendant must have
pleaded to the second Declaration, if
there had not been a new Process su-
ed out since it was delivered of the
same Term with the first Declaration,
notwithstanding the Debt and Costs on
the first Declaration were paid.

Anonymus.
Hil. 5 Geo. I.

Cooke.

DEfendant arrested on a special *Capias*, and held to Bail, he has four Days to put in Bail, yet in *Hilary* or *Trinity* Term the Plaintiff may Deliver a Declaration *de bene esse* in the first Day of the Term, and then give a Rule, and, if *Bail be put in*, in default of a Plea may sign Judgment when the Rule is out.

Of delivering
Declaration
de bene esse
on a special
Capias.

Anderton against Moreton.
Hil. 13 Geo. I.

Cooke.

UPON a special Writ, returnable *Octab' Hil.* or *Cro' Trin.* a Declaration may be delivered *de bene esse*, and a Rule to plead given thereon within the first four Days of the Term although no Appearance be entered, but if the Declaration be not delivered within the first four Days, an Appearance must be entered by the Plaintiff for the Defendant before the Declaration can be delivered.

Of delivering
a Declaration
de bene esse.

Declaration
can't be deli-
vered after the
Time for Ap-
pearance is
out, unless
Appearance
be entered.

L

Ano.

Anonymus.

Mich. 1 Geo. II.

On special Writs Declaration may be delivered *de bene esse* before Appearance entered, but must be delivered before Time for Appearance expired.

ON special Writs the Plaintiff may deliver his Declaration *de bene esse* before Appearance entered, but if the Plaintiff neglects to deliver the Declaration, until the Time for the Defendant to enter his Appearance be passed, then the Appearance must be entered before the Declaration can be delivered.

Joy against Francia.

Mich. 3 Geo. II.

Cookè.

Declaration may be delivered *de bene esse* on a common Writ.

THIS was an Action by common Writ returnable on the second Return of this Term, and upon the new Rule of Court made Mich. 3 Geo. 2. for taking away Imparlances, the Plaintiff left a Declaration in the Office *de bene esse*, and gave Notice thereof to the Defendant, and gave a Rule to plead; afterwards the Defendant enters an Appearance by Attorney, and the Plaintiff's Attorney called upon the Defendant's Attorney for a Plea, and for want of a Plea signs Judgment; the Defendant moved to set aside the Judgment, and insisted that having appeared

peated by Attorney, the Declaration should have been delivered to his Attorney. Upon hearing Serjeant *Chapple* for the Plaintiff, and Serjeant *Eyre* for the Defendant, the Court held this Judgment to be regularly signed, and that by this Rule the Plaintiff might deliver a Declaration *de bene esse*, and proceed in the same Manner as tho' he had proceeded by special Original.

Bredon *against* Hope.

Hil. 3 Geo. II.

Borret.

MOTION in the Treasury for an Impar lance to the next Term; the Plaintiff had taken out a common Writ, returnable on the second Return of this Term, and upon the *Essoin* Day of the Return delivered a Declaration *de bene esse* upon the new Rule *Mich. 3 Geo. 2.* but the Judges would not grant an Impar lance, as it would break through the new Rule.

Declaration may be delivered *de bene esse* on a common Writ.

Charlton *against* Hankey and Alsop.
Hill. 7 Geo. II.

Cooke.

On a Writ returnable the first or second Return of a Term, the Plaintiff may deliver a Declaration *de bene esse* before the Time for Appearance is out.

THE Writ was returnable on the second Return of the Term mens' *Mich.* being the 27th Day of *Oct.* the Plaintiff on the third of *Nov.* delivered a Declaration *de bene esse*, and on the same Day gave a Rule to plead; on the seventh of *November* the Plaintiff entered an Appearance for the Defendant, and signed Judgment for want of a Plea. Serjeant *Chapple* moved that this Judgment might be set aside, and insisted that the Defendant had eight Days after the Return of the Writ to appear, and that therefore the Plaintiff could not deliver a Declaration until the Time the Defendant had to enter his Appearance was expired. Serjeant *Darnal* for the Plaintiff insisted that by the Rule of *Mich. 3 Geo. 2.* whereby Imparances are taken away, it is expressly provided, that upon Writs returnable the first or second Return of any Term the Declaration may be delivered *de bene esse*. The Court held this Judgment to be regularly signed.

Chri-

Christophory against Otto.

Hil. 12 Geo. II.

Thomson.

SERJEANT *Draper* moved that the Judgment might be set aside, because no Notice was given of the Declaration; the Case was this: The Writ was returnable on the first Return of the Term; on the first Day of the Term a Declaration was left in the Office *de bene esse*, with Notice to plead in four Days; the Defendant did not put in Bail till after the four Days; as soon as Bail was put in, the Plaintiff's Attorney demanded a Plea of the Defendant's Attorney, and on the next Day signed Judgment. Serjeant *Draper* insisted that Notice of the Declaration being left in the Office ought to have been given to the Defendant's Attorney, or at least to the Defendant himself. Rule to shew Cause. *Eyre* for the Plaintiff. *Cur'*, As the Writ was returnable on the first Return of the Term, the Plaintiff might leave his Declaration *de bene esse* in the Office, and give a Rule; the Defendant ought to have put in Bail on the Appearance Day, and as he did not, it is not rea-

Declaration
left in the Of-
fice *de bene*
esse without
any Notice
given.

sonable that the Plaintiff should be delayed; it is the constant Practice and has been settled in other Cases, Notice is not necessary. *Sed Q.*

Jones *against* Enderup.

Hil. 2 Geo. II.

Declaration
in Assault and
Battery, con-
taining thirty
Counts, Court
refused to or-
der any to be
struck out.

MOTION that the Plaintiff should strike out of the Declaration all the Counts but the first; the Case was this: The Plaintiff had declared in Assault and Battery in one Count, got a Rule to amend on Payment of Costs, and delivered a Declaration containing thirty Counts. On reading an Affidavit of the Plaintiff that the Defendant had assaulted him sixty several Times; and hearing *Whitaker* for the Defendant, and *Baines* for the Plaintiff, the Court would not order the Plaintiff to strike out any of his Counts.

Harper

Declaration.

151

Harper, an Attorney, *against*
Woodhouse and others.

Hil. 7 Geo. II.

Thomson.

THREE Declarations for the same Assault, ordered to be reduced into one. The Plaintiff's Counsel prayed Costs, but the Court refused to give Costs. *Eyre* for the Defendant; *Skinner* for the Plaintiff.

Three Declarations joined in one.

Wood *against* Grace an Attorney.

Easter 13 Geo. II.

ACTION brought by a Surgeon for Medicines, Attendance, &c. the Plaintiff's Attorney delivered a Declaration containing nine Counts; the Defendant moved that the Declaration might be reduced to three Counts, Rule to shew Cause. On shewing Cause the Court ordered four Counts to be struck out, and the remaining five to stand, *viz.* an *Indebitatus Assumpsit & quantum meruit*, for Work and Labour, the like for Goods sold and delivered, and an *Indebitatus Assumpsit* for Money laid out for the Defendant's Use, which would be sufficient to take

Declaration reduced from nine to five Counts.

in the Plaintiff's whole demand. *Agar* for the Plaintiff; *Kettleby* for the Defendant.

Demurrer.

Wrath against *Rose*,
Hil. 5 Geo. II.

Borret.

Irregularity
in delivering
Demurrer
Books, when
to be com-
plained of.

8th Feb. *S*Erjeant *Birch* moved to set aside a Judgment for Irregularity; the Plaintiff had obtained Judgment on a Demurrer, without delivering two Books to the Defendant's Attorney. The Court (Chief Justice absent) made a Rule to shew Cause, though *Dentan* was against making any Rule, and instanced the Case of *Smith* and *Fenks*; afterwards *Chapple* and *Wynne* shewed Cause. The Court agreed the Judgment was Irregular, but discharged the Rule, because the Defendant ought to have applied sooner.

Sutton

Sutton *against* Laycon.

East. 6 Geo. II.

Cooke.

Serjeant *Hawkins* moved that the Defendant might be at Liberty to withdraw his special Demurrer, and plead the General Issue. Rule to shew Cause. *Eyre* for the Plaintiff; it appeared that the Declaration was delivered on the eighth of *February* last, and the Defendant's Agent being pressed for a Plea, Demurred, whereby the Plaintiff was prevented trying the Cause at the Assizes. The Rule for shewing Cause was discharged, tho' the Defendant offered to pay Costs; the Court saying it would introduce Delay, and was a Contrivance to get over the Assizes.

Leave to waive a Demurrer, and plead the General Issue, denied, the Plaintiff having lost a Trial.

Bellamy *against* Herring and others.

Easter 7 Geo. II.

Demurrer delivered after the Rule was out, the Plaintiff signed Judgment. Agreed *per totam Curiam*, he ought not to have signed Judgment without an Order of the Court or a Judge.

Demurrer delivered after Rule out, Plaintiff can't sign Judgment without a Leave.

Butler

Butler *against* Houghton.

Trin. 10 & 11 Geo. II.

Thomson.

Concilium
moved for be-
fore Demurrer
Book deliver-
ed.

THE Plaintiff demurred; the Defendant's Attorney delivered a Joinder in Demurrer to the Plaintiff's Attorney; the Plaintiff's Attorney moved for a *Concilium*, and then delivered the Paper Book. The Question was Whether he should not have delivered the Paper Book before he moved for a *Concilium*? *Denton* and *Fortescue* (Chief Justice and *Comyns* absent) said he should, and held the setting down the Demurrer in the Paper to be irregular.

Durrant *against* Lynes.

Trin. 10 & 11 Geo. II.

Borret.

Concilium
when to be
moved for.

BUT here it was held quite otherwise in full Court, with this Difference, that the Plaintiff had joined in Demurrer in this Case, and the Reason of the Judgment was, that if the Defendant had full four Days Notice of the *Concilium* before the Argument, it was sufficient, and no ways material for the Defendant to know the precise

cise Time when the *Concilium* was moved for. *Draper* for the Plaintiff; *Wright* for the Defendant.

Langton *against* Tuckwell.

Mich. 12 Geo. II.

Thomson.

Serjeant *Girdler* moved that the Joinder in *Concilium* might be set aside, because the Plaintiff had not delivered a Joinder in Demurrer under Counsel's Hand. Rule to shew Cause. *Skinner* for the Plaintiff, the Joinder was actually signed by Counsel, the Defendant's Attorney accepted and paid for the Paper Book in *June* last, and made no Objection till the Day before the Day appointed for Argument. *Cur'*, Let the Rule be discharged with Costs, there is no Necessity to deliver a Joinder in Demurrer separate from the Paper Book.

Cal-

Calverac and his Wife against
Pinhero. Mich. 13 Geo. II.

Thomson.

Demurrer af-
ter Issue in
Fact joined
set aside.

DEBT on Recognizance of Bail;
the Defendant pleaded *Nul tiel*
Record recuperationis; the Plaintiffs re-
plied *quod habetur tale Record*, &c.
and deliver'd the Issue with a Day given
for them to bring in the Record, viz.
Monday the 9th of *July*; the Defen-
dant's Attorney desired that the Day
for bringing in the Record might be
deferred till the next Day, which be-
ing complied with, he in the mean
Time delivered back the Issue with a
Demurrer to the Replication. The
Plaintiffs moved that the Demurrer
should be set aside, that the Defendant's
Attorney should receive the Issue
which he had returned, and that the
Plaintiffs might be at Liberty to verify
the Issue at a future Day, to be ap-
pointed for that Purpose. Rule to
shew Cause. *Wright* and *Draper* for
the Plaintiffs; *Burnet* and *Eyre* for the
Defendant. *Cur'*, (Chief Justice ab-
sent) You can't demur after Issue
-in Fact joined, if Issue be not
properly joined; you have four
Days

Discontinuance.

157

Days to apply after Judgment *Nisi*,
if Judgment be given for the Plaintiff.
Rule absolute.

Discontinuance.

Hale, Administrator *against* Norton.
Mich. 6 Geo. II.

Borret.

Serjeant *Chapple* moved that the Plaintiff, who was an Administrator, might have Leave to discontinue his Action without paying Costs. Serjeant *Eyre* for the Defendant said, that an Administrator should pay Costs for his own *Laches*. *Cur'*, If the Plaintiff discontinues, although he be an Administrator, he must pay Costs. Serjeant *Chapple* said, that the Judges of the King's Bench had at the Side-Bar given an Administrator Liberty to discontinue without paying Costs; a Day or two after Justice *Fortescue* informed the Court, that he had inquired of the Judges of the King's Bench, and that they told him they did make such Order at the Side-Bar, but that having considered of the Thing, they had discharged

On Discontinuance the Plaintiff must pay Costs tho' he be an Administrator.

ged that Order, and made the Administrator pay Costs.

Hook, an Administrator, *against* Haywood. Easter 13 Geo. II.

Whether a Plaintiff can discontinue without Leave of the Court.

Scire Facias to revive a Judgment recovered by the Plaintiff's Intestate; the Defendant craved *Oyer* of the Letters of Administration; which being defective, the Plaintiff proceeded no further on the *Scire Facias*, but having procured sufficient Letters of Administration, brought an Action of Debt on the Judgment in the Court of King's Bench; the Defendant pleaded in Abatement, the Action by *Scire Facias* depending in this Court; the Plaintiff replied a Discontinuance, which having been entered without Leave, the Defendant moved to have it set aside. The Question was, Whether a Plaintiff could discontinue without Leave of the Court; and the Practice was variously reported; but it not appearing whether the Roll on which the Discontinuance was entered was brought in before or after the Plea in Abatement in *B. R.* the Rule to shew Cause why the Discontinuance should not be set aside was discharged, the Plaintiff consenting

senting to pay the Costs of the Plea in Abatement, and that the Plaintiff should be at Liberty to plead *de novo*. *Prime* for the Plaintiff; *Agar* for the Defendant.

Dower.

THE Defendant's Attorney must take care to cast his *Essoin* with the Clerk of the *Essoins* in due Time, or the Plaintiff will enter a *No recipiatur*, after the *Essoin* is ended, which is five Returns, the Defendant must enter his Appearance with the Filacer, and pray the View, he must then appear in Chief and receive a Declaration.

Proceeding
ex parte de-
fendensis in
Dower.

Strangeways against Aylcough.

Mich. 4 Geo. I.

Cooke.

DOWER. Judgment by Default. Notice must be given of Executing the Writ of Inquiry, though the Defendant be not in Court by Attorney. Writ of Inquiry set aside for want of Notice.

Notice must
be given of
an Inquiry in
Dower.

Chaplin *against* Chaplin.

Easter 4 Geo. II.

The Defendant cannot apply to the Court till he has appeared in Chief.

IN Dower. Agreed *per Curiam*, The Defendant cannot make an Application to the Court until he has appeared in Chief. *Chapple* for the Plaintiff; *Eyre* for the Defendant. In this Case the Defendant had counter-pleaded the View, and moved the Court for *Oyer* of the Writ of Dower, but the Motion was denied for the Reason above mentioned.

Freeman and his Wife, late Wife of Samuel Sparrow, Demandants; Cranham and others, Tenants. Easter 8 Geo. II.

Thomson.

Grand Cape set aside because not proclaimed 14 Days before the Return.

IN Dower. Serjeant *Wright* moved to set aside a *Grand Cape* because the Summons was not proclaimed at the Church-Door, fourteen Days before the Return, pursuant to the Statute 31 *El. c. 3. sect. 2.* The Court made a Rule to shew Cause, and no Defence being made, the Rule was made absolute on Affidavit of Service.

Ejectment.

Fitcher, Lessee of Parry, against Jones. Trin. 10 & 11 Geo. II.

Cooke.

Ejectment for five Tenements and one Acre of Land. Judgment against the casual Ejector; Serjeant *Wright* moved that it might be set aside for Incertainty in the Parcels, viz. as to the five Tenements. Rule to shew Cause.

Ejectment (inter alia) for five Tenements incertain.

Fenn against Denn.
Hil. 13 Geo. II.

A Rule for Judgment granted in an Ejectment for Lands in the County of *Denbigh* in *Wales*, on the Motion of Serjeant *Birch*.

Ejectment for Lands in Wales.

M

Roe

Roe, Lessee of Fitzherbert, *against*
Doe. Trin. 10 Geo. II.

Thomson.

Infant Lessor
of the Plain-
tiff not obli-
ged to give
Security for
Costs.

Ejectment. Serjeant *Hawkins* mo-
ved to stay Proceedings until the
Lessor of the Plaintiff gave Security to
the Tenants in Possession for Payment
of Costs, the Lessor of the Plaintiff
being an Infant. Serjeant *Skinner*,
contra, on a Rule to shew Cause, and
said no such Thing was ever granted,
and he believed never asked before.
Cur' unanimous in discharging the
Rule, and *Comyns* said he had known
it denied. *Reeve*, Chief Justice, ab-
sent.

York, Lessee of Chambers, *against*
Ferris. Mich. 4 Geo. II.

Declaration
in Ejectment
intituled Trin.
4 Geo. 2. in-
stead of 3 &
4, &c. not
material.

Serjeant *Chapple* moved for Judg-
ment against the casual Ejector; he
acquainted the Court that the Decla-
ration was intituled *Trin. 4 Geo. 2.* and
the Notice to appear was for this pre-
sent *Mich.* Term, the Declaration
should have been intituled, *Trin. 3 & 4.*
Cur', Had there been no Title to the
Declaration it would have been good,
and the Notice is dated at a Day cer-
tain

tain, but that the Tenants may have an Opportunity to apply to the Court, let there be a Rule for Judgment on the second Day of next Term upon Notice to the Tenants. *Note*; This was a Country Ejectment.

Hodgson, Lessee of Kender, *against*
Mason. Easter 8 Geo. II.

Borret.

Serjeant *Birch* moved that the Judgment signed against the casual Ejector might be set aside. Rule to shew Cause. *Skinner* for the Plaintiff. This was an Ejectment for Land in the County of *Stafford*, a Declaration was delivered in last *Trinity* Vacation, with Notice to appear in *Hilary* Term following (taking no Notice of *Michaelmas* the intervening Term); two of the Tenants had appeared of *Michaelmas* Term, the Plaintiff's Attorney searching the Filacer's Book for an Appearance of *Hilary* Term, and finding no Appearance of that Term, signed Judgment against the casual Ejector. *Cur*. This Judgment is regularly signed, the Tenants should have appeared as of the Term mentioned in the Notice, but as the Right has not been tried, let

Declaration delivered in Trinity Vacation with Notice to appear in Hilary Term.

the Judgment be set aside on Payment of Costs, &c.

Scrape *against* Hunt.

Hil. 13 Geo. I.

Declaration of Michaelmas Term delivered before the Essoin Day of Hilary Term and the Demise laid on the first Day of January.

DEclaration in Ejectment delivered before the *Essoin* Day of *Hilary* Term, and the Demise laid on the first Day of *January*, which was after *Michaelmas* Term, and therefore the Declaration could not be a Declaration of *Michaelmas* Term. And now *Baines* moved for an Imparllance till next Term, and compared this Case to a special Original, where the Cause of Action arose after the Teste of the Writ. Upon hearing *Bridges* for the Defendant, the Court would not grant an Imparllance, and said that an Ejectment was the Creature of the Court, and the Demand was from the Time of the Service of the Declaration.

Note, If Judgment in this Case was entered against the casual Ejector, the Tenant in Possession could not take Advantage of this Error, because he was a Stranger to the Action; if the Tenant in Possession appeared, a new Declaration of *Hilary* Term would be delivered, and then all would be right.

Kir-

Kirwood, Lessee of Brace, *against*
Backhouse. Mich. 6 Geo. II.

Cooke.

MOTION for Judgment in Eject-
ment, the Person who went to
serve the Declaration in Ejectment
knocked at the Door of the House, the
Wife of the Tenant in Possession open-
ed a Wicket in the Door, and the Per-
son acquainted her with the Contents
of the Declaration, and read the Sub-
scription to her; the Wife immedi-
ately shut the Wicket: Whereupon the
Person fixed the Declaration upon the
Door; the Husband, who was the Te-
nant in Possession, had acknowledged
that he had received the Declaration
the same Day. The Chief Justice and
Denton thought that the Declaration
was not well served, *Price* and *For-*
tescue thought it was. No Rule.

Declaration
in Ejectment
fixed on the
Door, &c.
not well served
tho' Tenant
acknowledged
the Receipt.

Birbeck *against* Hughes.

Hil. 7 Geo. II.

Ejectment. Serjeant *Skinner* moved
for Judgment against the casual
Ejector; the Affidavit of Service of
the Declaration set out that the Depo-
nent

Affidavit of
Service of
Declaration
on the Tenant
or his Wife,
incertain.

Ejectment.

rent served *A. B.* the Tenant in Possession or *C.* his Wife. *Cur'*, This Affidavit is not certain as to either. No Rule.

Bate, Lessee of Baker, *against* Tipping. Hil. 7 Geo. II.

Borret.

Affidavit of Service of Declaration on two, who are, or one of them is Tenant, incertain.

MOTION for Judgment against the casual Ejector ; the Affidavit was, that the Deponent did deliver the Declaration into the Hands of—the Wife of *Nathaniel Bates* and to *Benjamin Tipping*, which said *Nathaniel Bates* and *Benjamin Tipping* are, or one of them is Tenant in Possession. *Cur'*, This Affidavit is incertain. No Rule.

Halsal, Lessee of Lord Lee, *against* Wedgewood. East. 7 Geo. II.

Cooke.

Declaration tendered, refused and left on the Premises in the Tenant's Presence, sufficient.

SErjeant *Hawkins* moved for Judgment against the casual Ejector, Upon an Affidavit of a Tender of the Declaration to the Tenant in Possession, who refused to accept it, and got a Gun, and threatened to shoot the Person who tendered the Declaration to him ; whereupon the Person threw the Declaration down

down and left it on the Premises in the Tenant's Presence. *Cur'*, Take a Rule for Judgment *Nisi*; this is like the Case of continual Claim, where the Party comes as near to the Land as he can to make his Claim. The Chief Justice said it would have been a good Delivery, if there had been no Violence offered, since the Declaration was tendered, refused and left on the Premises in the Tenant's Presence; this differs from the Case of *Kirwood and Backhouse*, *Mich. 6 Geo. 2. Antea fo. 165.* There was no Tender of the Declaration.

Goodlad, Lessee of Roundel,
against Jefferson.

Trin. 13 Geo. II.

Borret.

Serjeant *Agar* moved for Judgment Declaration against the casual Ejector, upon Affidavit that the Tenant's Sister was served with the Declaration in Ejectment, and acquainted with the Contents of it before the *Essoin* Day of the Term, and that on the Twenty-fourth Day of June, which was after the *Essoin* Day, the Tenant acknowledged that he had received the Declaration. *Cur'*, Let Judgment be signed against the casual Ejector, unless the Tenant shall appear

pear within six Days after Notice of this Rule.

Tupper, Lessee of Mercer and Woollet, *against* Doe.

Hil. 13 Geo. II.

Service of a Declaration in Ejectment on the Churchwardens and Overseers of the Poor of a Parish.

THE delivering a Declaration in Ejectment to the Churchwardens and Overseers of the Poor of a Parish who rented the Tenement in Question for the Habitation of their Poor, and did not otherwise occupy it, deemed good Service, and a Rule for Judgment made on the Motion of Serjeant *Agar*.

Moulden, Lessee of Cambden, *against* Wrangham.

Hil. 5 Geo. II.

Foley.

What Affidavit necessary on Motion for Judgment on the late Act.

ON a Motion for Judgment in Ejectment on the late Act of Parliament, 4 Geo. 2. c. 28. If there be no Tenant, it is necessary to set out in the Affidavit that there is no Tenant, that there is Half a Year's Rent in Arrear, and that there is no Distress on the Premises sufficient to countervail the Arrears of Rent, and that there is a Covenant

con-

contained in the Lease, by which the Lessor of the Plaintiff had and now hath a Power of Re-entry.

Positive, Lessee of Parsons, *against*
Negative. Mich. 6 Geo. II.

Borret.

24 Nov. **S**erjeant *Corbet* moved for Judgment in Ejectment, on a vacant Possession in *Middlesex*. *Cur.* The Rule of *Trin. 32 Car. 2.* limiting the Time for moving for Judgment in Ejectments in *London* and *Middlesex*, does not relate to vacant Possessions. Rule for Judgment.

On vacant Possession in London or Middlesex, may move for Judgment any Time in Term.

Gulliver against Appleyard.

Mich. 4 Geo. II.

30 Oct. **M**OTION to set aside a Verdict in Ejectment, for a Variance between the Issue delivered and the Record of *Nisi Prius*; the Defendant being called in the Issue, *Appleby*, the Plaintiff insisted that the confessing Lease, Entry and Ouster was a Defence, and thereby the Variance cured. The Counsel for the Defendant insisted that they must have confessed Lease, Entry and Ouster, or else the Defendant would have been out

Confessing Lease, Entry and Ouster at Trial will not bar the Defendant from taking Advantage of a Variance between the Issue and Record of *Nisi Prius*.

out of Court, and he only did it in pursuance of the Rule by Consent. Agreed *per totam Curiam*, that the confessing Lease, Entry and Ouster was not such a Defence as would prevent the Defendant from taking Advantage of the Variance, and therefore the Rule was made absolute for setting aside the Verdict.

Jones, Lessee of Thomas, *against*
Hergeft. Mich. 8 Geo. II.
Cooke.

The like Resolution.

Serjeant *Eyre* for the Defendant, moved to set aside a *Non Pros* at the Assizes, for Default of confessing Lease, Entry and Ouster, there being a material Variance between the Issue delivered and the Record of *Nisi Prius*. Serjeant *Chapple* for the Plaintiff insisted that this being a *Non Pros* the Parties were out of Court, and that if the Defendant would have taken Advantage of the Variance, he should have confessed Lease, Entry and Ouster, which would have prevented a Non-suit. In answer to this it was said, that if the Defendant had appeared, and confessed Lease, Entry and Ouster, it would have been making a Defence, and then he could have taken no Advantage of the Variance; so the Question

tion was, Whether appearing and confessing Lease, Entry and Ouster, was making a Defence? *Cur*, The Defendant should have appeared and confessed Lease, Entry and Ouster; and his doing that would not have been making a Defence, so as to have hindered him from taking Advantage of the Variance; and so it was determined in this Court, *Gulliver* against *Appleyard*, *Mich. 4 Geo. 2.* But as this Case was in Ejectment, where the Possession would be altered without having the Merits of the Cause tried; the Court set aside the *Non Pros*. But because the Defendant had not confessed Lease, Entry and Ouster, it was said he ought to pay Costs; therefore the Rule was that the *Non Pros* should be set aside on Payment of Costs.

Anonymus.

Easter 1 Geo. II.

WHERE a Verdict in Ejectment is for the Defendant, or the Plaintiff becomes nonsuited upon Evidence, a *Capias ad Satisfaciendum* must be made out against the Plaintiff, and the Costs demanded of the Plaintiff's Lessor. Ruled, that to deliver a Copy of the Writ is not necessary, Shewing it, is sufficient. Where the Plaintiff be-

How the Defendant is to recover his Costs in Ejectment.

becomes nonsuited for not confessing Lease, Entry and Ouster, the Costs are taxed on the Rule by Consent, and Judgment signed against the casual Ejector.

Wright, Lessee of Betts, *against* Hall.
Hil. 13 Geo.

Of demand-
ing Costs of
Lessor of
Plaintiff.

7 Feb. **A**GREED *per totam Curiam*, that the Lessor of the Plaintiff can't be brought into Contempt for Non-payment of Costs, upon a Nonsuit *sur Evidencie*, unless he be served with the Rule by Consent as well as with a Copy of the *Capias ad Satisfaciendum*.

Goodright, Lessee of Rovet, *against* Vice. Trin. 13 & 14 Geo. II.
Thomson.

Remedy for
Costs when
the Plaintiff is
nonsuited for
not confessing
Lease, Entry,
&c. is on the
Rule by Con-
sent.

THE Plaintiff being nonsuited at the Assizes because the Defendant did not confess Lease, Entry and Ouster, signed Judgment against the casual Ejector, sued out a *Fieri Facias* against the Defendant *Vice*, and took his Goods in Execution. Serjeant *Wynne* moved that the *Fieri Facias* might be set aside, and Restitution made to the Defendant, the Judgment being against

against the casual Ejector, and not against *Vice*. Rule to shew Cause. *Hussey* and *Draper* for the Plaintiff. *Cur*, Let the *Fieri Facias* be set aside, and the Goods be returned, the Plaintiff's Remedy being upon the Rule by Consent; let the Plaintiff's Attorney pay the Costs, the Defendant consenting not to prosecute an Action he had brought on this Occasion in *B. R.*

Ellis, Lessee of Lord Faulconbridge, against Knowles and others. Easter 7 Geo. II.

Thomson.

Ejectment. Some of the Defendants appeared by one Attorney, and some by another; at the Trial some of the Defendants appeared, and confessed Lease, Entry and Ouster, the others would not confess Lease, Entry and Ouster; the Plaintiff had a Verdict against those who appeared and confessed Lease, Entry and Ouster; but the Defendants who did not confess Lease, Entry and Ouster had a Verdict found for them, by the Direction of the Judge. Serjeant *Darnal* moved that the Defendants who did not confess Lease, Entry and Ouster, might

Proceedings when some of the Defendants do not confess Lease, Entry, &c. at the Trial.

might pay Costs to the Lessor of the Plaintiff, and that the Plaintiff might be at Liberty to sign Judgment against the casual Ejector, and take Possession of the Land in the Possession of those Defendants. Rule to shew Cause, which was afterwards made absolute on Affidavit of Service.

Pendock *against* Johnson.

Trin. 6 & 7 Geo. II.

Thomson.

Proceedings
in Ejectment
staid till Costs
of a former
Ejectment
paid.

MOTION to stay Proceedings in an Ejectment, till the Costs of *Non Pros* for not entering the Issue in a former Ejectment for the same Lands were paid; the Costs of the *Non Pros* had been demanded of the Plaintiff's Attorney, the Plaintiff being beyond Sea. Rule to shew Cause. Afterwards made absolute on Affidavit of Service.

Benn

Benn, Lessee of Mortimer, *against*
Denn. Trin. 13 Geo. II.
Borret.

Serjeant *Bootle* moved that Proceed- Ejectment not
ings in this Ejectment might be to be staid till
staid till the Costs of a former Eject- Costs of for-
ment were paid ; in the former Eject- mer Ejectment
ment a Verdict had been found for the paid, where
Defendant, and *Mortimer* the Lessor the Lessor is
of the Plaintiff, was in Custody in Custody
upon for those
an Attachment for Non-payment Costs.
of those Costs ; the Court deemed the
Attachment to be in Effect an Execu-
tion, and as the Defendant had the Bo-
dy of the Lessor, they refused to make
any Rule.

Goodright, Lessee of Parker,
against Thrustout.
Mich. 9 Geo. II.

Thomson.

Ejectment. *Comyns* and *Glyde*, Ser- Lessor's Name
jeants, moved that the Judgment omitted in the
in this Cause might be set aside, and Part of Decla-
the Possession restored, because there ration which
was no Lessor's Name in the Declara- recites the
tion delivered to the Tenant in Pos- Writ, not
session. Rule to shew Cause. *Chap- material.*
ple

ple and *Eyre* for the Plaintiff, said though the Lessor's Name was omitted in that Part of the Declaration, which recited the Writ, yet he is named in the Body of the Declaration, *viz.* he the said *Robert Parker* had demised, &c. *Cur'*, That is sufficient.

Goodright, Lessee of Ruffel,
against Noright.

Mich. 12 Geo. II.

Irregular
Judgment a-
gainst casual
Ejector, Writ
of Restitution
ordered.

JUDgment against the casual Ejector was set aside for Irregularity, and the Possession ordered to be restored; but the Lessor of the Plaintiff who with-held the Possession absconding, the Rule for restoring the Possession proved ineffectual. Serjeant *Eyre* moved on Behalf of the late Tenant for a Writ of Restitution. *Cur'*, Take the Writ.

London *against* Hill, an Attorney.

Four other Causes *against* The Same. Trin. 5 & 6 Geo. II.

Porret.

FIVE several Actions were brought against the Defendant, who was an Attorney, for appearing and pleading for the Plaintiffs in an Ejectment without their Consent and Direction. *Chapple, Eyre and Comyns*, Serjeants, moved that it might be refer'd to the Prothonotary, to see whether the Plaintiffs had sustained any and what Damage, and if any, the Defendant submitted to pay it. *Cur'*, It is hard on the Attorney to have these Actions brought against him, if he had Authority from the proper Landlord, he deserves the Protection of the Court; let the Plaintiffs shew Cause why Proceedings should not be staid. Instead of shewing Cause, *Darnal and Baynes*, Serjeants, moved on behalf of the Tenants in the Ejectment Cause, who were Plaintiffs in these Actions, that they might have Liberty to withdraw their Pleas, pleaded by the present Defendant. Rule to shew Cause. *Chapple, Eyre and Comyns* shewed Cause. *Cur'*, As the Pleas were pleaded by an

Action against an Attorney for appearing and pleading in Ejectment without Authority.

Leave to withdraw the Pleas.

N

Attor-

And Proceedings against the Attorney staid on Payment of Costs.

Attorney who had no Authority, they are not the Pleas of the Parties, let them be withdrawn; this is not the Case of old Tenants and old Landlords, in such a Case the Court might interpose, but not in a doubtful or controverted Title. On shewing Cause why Proceedings should not be staid by Consent, let it be refer'd to the Prothonotary to tax the Plaintiffs their whole Costs, which are all the Damages the Plaintiffs have sustained.

Error.

Thornhill, Lessee of the Duke and
Duchess of Hamilton, *against*
Fleetwood.

Hil. 12 Anne.

Foley.

Error on a Judgment after Verdict for Defendant in Ejectment, no Bail necessary.

JUDgment in Ejectment on a Special Verdict for the Defendant, Error brought by the Plaintiff. Agreed *per totam Curiam*, no Bail requirable on this Writ of Error.

Bloom-

Bloomfield and his Wife *against*
 Shortridge, Heir at Law.
 Mich. 7 Geo. I.

ERROR brought by an Heir at Law on a General Judgment by *Nil dicit.* Agreed he shall give Bail. Bail in Error by an Heir at Law on a Judgment by Nil dicit.

Goodtitle *against* Bennington.
 Trin. 10 & 11 Geo. II.

Cooke.

Ejectment, Verdict for the Plaintiff, Writ of Error brought, and Bail put in. Serjeant *Eyre* moved that the Bail might justify. *Agar*, for the Defendant in Error, objected, that by the Stat. 16 & 17 Car. 2. c. 8. s. 3. it was required that the Plaintiff in Error should himself enter into the Recognizance in Cases of Ejectment and Dower. *Eyre* urged that two Persons becoming Bail, gave the Defendant in Error a better Security than he could have had in Case the Plaintiff in Error had alone entered into the Recognizance. The Clerk of the Errors said the Practice was both ways. *Cur'*, Let the Bail justify, and if the Plaintiff in the Ejectment In Error on Ejectment, the Plaintiff in Error may give Bail and need not himself enter into the Recognizance.

N 2 thinks

thinks that the Writ of Error is not a *Supersedeas*, because the Plaintiff in Error has not entered into the Recognizance, let him proceed at his Peril.

Doe, Lessee of Godfrey, *against*
Lushington. Mich. 12 Geo. II.
Borret.

Error in Ejectment, the Party may give Bail and need not enter into a Recognizance.

Ejectment, Verdict for the Plaintiff, Writ of Error brought by the Defendant, who puts in Bail, but he himself did not enter into the Recognizance. Serjeant *Draper* for the Plaintiff, moved for Leave to take out Execution, because by the Stat. 16 & 17 Car. 2. c. 8. §. 3. the Party who brings a Writ of Error after Verdict in Dower or Ejectment, is to become bound. Rule to shew Cause. *Wright* for the Defendant said that good Bail was put in, who had justified, and that was a better Security to the Plaintiff, than if the Defendant had alone become bound. *Cur'*, The Plaintiff has a better Security than he is intitled to, discharge the Rule. Bail in Error cannot be taken by a Commissioner in the Country, and it would be very hard to oblige a Defendant who lives at a great Distance from *London* to come into Court to enter into a Recognizance in this Case.

Roe,

Roe, Lessee of Humfreys, *a-*
gainst Collier.

Easter 13 Geo. II.

Thomson.

THE Defendant not confessing Casual Eject-
or can't bring
Error. Lease, Entry and Ouster, the Plaintiff was nonsuited at *Oxford* Assizes; and thereupon Judgment was entered against the casual Ejector. Serjeant *Wynne* moved for an Attachment against *John Adney*, the Defendant's Attorney, for bringing a Writ of Error in the Name of *Roe*, the casual Ejector. Rule to shew Cause. *Umlin* for *Adney*; it appearing that *Adney* had been informed by some of the Curfistors Clerks, that a Writ of Error lay in this Case, the Rule for an Attachment was discharged; but the Attorney was ordered to pay Costs, and to *Non Pros* the Writ of Error at his own Charge.

Robe *against* Smith.

Trin. 13 Geo. I.

Debt on a
Judgment
pending a
Writ of Error,
the Plaintiff
may proceed
to Judgment,
but not to
Execution till
Error determined.

THE same Rule was made as in the Cause of *Jackson* and *Ducket*, *antea* fo. 55. that the Plaintiff should have Leave to proceed to Judgment, but not to take out Execution till the Writ of Error was determined.

Berry *against* Bourk.

East. 2 Geo. II.

Action of
Debt on a
Judgment
pending a
Writ of Er-
ror, the Plain-
tiff may pro-
ceed to Judg-
ment, but not
to Execution
till Error de-
termined.

Baynes moved to stay Proceedings upon an Action of Debt on a Judgment, there being a Writ of Error depending. *Cur'*, If you will give Judgment, we will stay the Plaintiff from taking out Execution. The Case of *Coe* against *Allam*, *Trin.* 9 Geo. 1. and *Jackson* and *Ducket*, *Hil.* 13 Geo. 1. *antea* fo. 55. were cited. *Cur'*, We will not put the Plaintiff to the Trouble of Proceeding to Judgment, but if you would have us do any Thing for you, give Judgment; upon this a Rule was made for the Plaintiff to shew Cause why Proceedings should not be staid

staid till the further Order of the Court;
upon the Defendant's giving Judgment,
Postea made absolute.

Humphreys *against* Daniel.

Easter 9 Geo. II.

Cooke.

AN Action of Debt was brought on a Judgment pending a Writ of Error in the Original Action, the Plaintiff proceeded to Judgment and took out Execution, the Defendant moved to set aside the Execution. The Court determined that the Plaintiff might take out Execution notwithstanding the Writ of Error, and that if the Defendant would have stopped him from taking out Execution till the Writ of Error should be determined, he should have applied to the Court for that Purpose. *Chapple* for the Plaintiff; *Corbet* for the Defendant. *Vide Postea* fo. 186. *Swift* against *Tuckwell*.

Debt on a Judgment, pending a Writ of Error: and Judgment thereon; the Plaintiff may take out Execution if the Defendant does not apply to have it staid.

Spinks *against* Bird.
Easter 10 Geo. II.

Thomson.

After Error
brought the
Plaintiff can't
proceed to
outlaw the
Defendant on
the Judgment.

THE Plaintiff recovered, and thereupon sued out an Exigent in order to outlaw the Defendant, to which Exigent the Defendant sued out a *Supersedeas*, having brought a Writ of Error on the Judgment.

The Plaintiff moved to quash the *Supersedeas*.

Contra, for the Defendant, A Writ of Error is a *Supersedeas* to the Exigent. 1 *Vent.* 53. *Godbolt* 439. *Cro. Jac.* 242. *Rastal* 309. *b. pl.* 10. *Officina brevium* 378. *Thesaurus brevium* 299. *Clift's Entries* 693, 694. 2 *Cro.* 342, 532. The Writ of Error bears Teste the 12th of *February*, the Exigent bears Teste the 7th of *February*, so the Writ of Error was subsequent to the Exigent.

The Plaintiff insisted that Proceedings after Judgment are different now to what they were formerly, for now the Plaintiff may bring Debt on the Judgment after a Writ of Error, whereas formerly he could not; therefore in this Case, as the Party is not amenable to Justice, the Plaintiff may proceed to outlaw him, so

so as he does not take out Execution against the Party upon the Outlawry. 1 *Roll. Abr.* 177. Dr. *Drury's Case*, Ditto. 777. f. pl. 3. the Defendant suffers no more Inconveniency by being Outlawed upon the Judgment, than if a new Action was brought upon the Judgment.

Chief Justice, Is the Outlawry a Proceeding to Execution or not? for a Writ of Error is allowed on both Sides to be a *Supersedeas* to stay Execution, it seems to me to be a Proceeding to Execution. See the Words of the Exigent. As to the new Practice of suffering the Plaintiff to bring Debt on the Judgment pending a Writ of Error, and to proceed to Judgment thereupon; it hath always been construed to restrain the Plaintiff from taking out Execution; therefore this, being a Proceeding to Execution, and founded upon a *Capias ad Satisfaciendum*, which was first sued out, cannot be justified. *Cur'* unanimous in this Opinion, the Rule discharged.

Swift

Swift *against* Tuckwell.

Mich. 13 Geo. II.

Thomson.

Debt on a
Judgment
pending a
Writ of Error
the Plaintiff
may proceed
to Execution
if not staid by
Motion.

JUDgment, Writ of Error, Action of Debt on that Judgment, Judgment recovered thereon, and Execution executed. Serjeant *Eyre* moved that the Execution might be set aside. Rule to shew Cause. *Wright* for the Plaintiff insisted that when the Action of Debt was brought on the Judgment the Defendant should have moved the Court, that upon giving Judgment in that Action, Execution should be staid till the Writ of Error was determined; which he not having done the Plaintiff is regular. *Cur'*, Let the Rule be discharged. *Vide antea* fo. 183. *Humphreys* against *Daniel*.

Harding *against* Avery.

Mich. 2 Geo. II.

Foley.

Judgment
signed after
the Return of
the Writ of
Error was out,
Record not
removed, and
Execution re-
gular.

MOTION to set aside a *Capias ad Satisfaciendum*, upon which the Defendant was taken in Execution after a Writ of Error allowed; the Case was this, The Plaintiff had recovered in an Action in the Common Pleas,

Pleas, but did not sign his final Judgment; the Defendant brings his Writ of Error, and served the Plaintiff with Notice of the Allowance; the Plaintiff in the Original Action lays by until the Return of the Writ of Error was out, and than signs his final Judgment, and takes the Defendant in Execution. Upon hearing *Morley* and *Eyre* for Defendant, and *Hawkins* for the Plaintiff, the Court held that the Writ of Error being spent, the Plaintiff might sue out Execution; and the Plaintiff not having signed his final Judgment, the Writ of Error could not remove the Record, and refused to set aside the *Capias ad Satisfaciendum*. *Vide* 1 *Vent.* 96, 97. The Party should see the Judgment entered, for after Inquiry returned the Court is to give Judgment at the Prayer of either Party, and not without.

Joy *against* Francia.

Mich. 2 Geo. II.

Cooke.

MOTION to set aside an Execution, which was executed, upon this Case; a Verdict was obtained for the Plaintiff, and the Defendant brought
After Return of the Writ of Error was out Plaintiff signs Judgment and takes out
 Execution, regular, tho' Bail on the Writ of Error.

a Writ of Error and put in Bail thereon; the Plaintiff deferred signing his Judgment until the Return of the Writ of Error was past, and than signs his Judgment, and takes out Execution. *Whitaker* and *Cheshire* for the Defendant, would have distinguished this Case from *Harding* and *Avery* this Term, because here was Bail on the Writ of Error, and that was only a Judgment on Inquiry. Upon hearing *Eyre* and *Chapple* for the Plaintiff, the Court refused to set aside the Execution.

Chivers *against* Millet.
Trin. 3 Geo. II.

Cooke.

Judgment
signed after
Return of
Writ of Error,
the Court re-
fused to set a-
side the Exe-
cution.

MOTION to set aside an Execution taken out after a Writ of Error allowed, and Notice thereof given; the final Judgment was not signed till after the Return of the Writ of Error was out. *Harding* versus *Avery*. *Foy* versus *Francia*, were cited, *Chapple* for the Plaintiff; *Eyre* for the Defendant. The Court would not set aside the Execution.

War-

Warwick *against* Figg.

Mich. 6 Geo. II.

Thomson.

7th Nov. **M**OTION to set aside Execution pending Writ of Error.
 an Execution, executed after a Writ of Error allowed, and Notice thereof given to *Wreatbuck* the Plaintiff's Attorney. Upon shewing Cause by Serjeant *Eyre*.

Chapple for the Defendant, this Cause was tried in *Easter* Vacation, the Day in Bank was *Craftinum Trin.* the Writ of Error was returnable *Tres Trin. 26 June*, the Term ended the 28th of *June*, but the Plaintiff's Attorney, in order to defeat the Defendant of the Benefit of this Writ of Error, as to its being a *Supersedeas*, defer'd Signing Judgment till the 30th of *June*; this is a Judgment of *Trinity* Term, is affected by the Writ of Error, and the Clerk of the Errors has actually transcribed the Record; the Execution is also irregular, for that it bears Teste pending the Writ of Error.

Baynes for the Defendant, this is a Judgment of the first Day of *Trinity* Term, and consequently is removed by the Writ of Error; an Attachment
 ought

ought to go against *Wreatboc* for this Practice.

Eyre, Chief Justice, This Execution seems to be irregular, this Writ of Error would have affected the Judgment if signed at any Time in *Trinity* Vacation and before *Michaelmas* Term ; this Case differs from that of *Joy* and *Francia*, that Judgment was signed in the Term, subsequent to the Return of the Writ of Error, the Judgment in this Case is of the same with the Writ of Error, and so is the Execution, and consequently wrong.

Price, This Execution is wrong, for the Writ of Error was then depending, and no *Non Pros* signed, and therefore is irregular.

Denton and *Fortescue* of the same Opinion.

Cur', Let the Execution be set aside, the Money levied, and now in the Sheriff's Hands, be restored, and *Wreatboc* pay all the Costs ; we will respite the Consideration of an Attachment against him, till Restitution made and Costs paid.

Note ; This was an Action for an Assault and violent Battery on the Plaintiff *Warwick* (who was a Bailiff and a Boxing Fighter,) for cutting off the Forefinger of his Right Hand by the

the Defendant *James Figg*, (the famous Prize Fighter,) with his Hanger or Broad-Sword, and in this Action the Plaintiff had a Verdict for 100 *l.* Damage.

The Defendant, *Figg*, had also brought an Action against *Warwick*, for a violent Assault upon him in his own House by *Warwick* and one *Smith*, another Bailiff, who had beat and bruised him in such a Manner as greatly endangered his Life; this Action being tried immediately after the other, and the Jury thinking *Figg* to be the most injured, and *Warwick* and *Smith* to be the first Aggressors, gave *Figg* 105 *l.* Damage.

Figg signed Judgment, but defer'd taking out Execution, thinking *Warwick* would pay him the Difference due upon the Ballance, which was 5 *l.* 10 *s.* upon the whole of Damages and Costs on both Sides; but *Warwick* refusing to pay the Difference, and threatening to take out Execution, *Figg* brought this Writ of Error in order to gain Time to file a Bill in Chancery to compel an Account and Payment of the Difference.

Figg's Verdict was for 105 *l.* Damage, 18 *l.* 10 *s.* Costs. Total 123 *l.* 10 *s.*

Warwick's Verdict was for 100 *l.* Damage, 18 *l.* Costs. Total 118 *l.*

The Court thought that a Bill in Equity was very proper, *Warwick* having refused to come to an Account and pay the Balance.

Arden *against* Lamley.

East. 8 Geo. II.

Cooke.

Attorney de-
laying to sign
Judgment till
Writ of Error
spent, order-
ed to sue out
a new one at
his own Ex-
pence.

SERJEANT *Eyre* moved that the Plain-
tiff's Attorney might sue out a new
Writ of Error at his own Expence ;
the Defendant had brought a Writ of
Error, returnable *Oet Hil'*, and got it
allowed, and on the 18th of *January*
took out a Summons for the Plaintiff
to shew Cause why he should not en-
ter up his final Judgment ; the Plaintiff's
Attorney did not attend this Summons,
but afterwards signed his Judgment as
of this Term, and brought an Action
of Debt upon it. Rule to shew Cause.
Chapple for the Plaintiff. *Cur'*, This
is a mere Contrivance of the Plain-
tiff's Attorney, and he is taking Advan-
tage of his own Delay, let him sue out
a new Writ of Error at his own Ex-
pence, and pay the Defendants the
Costs

Costs he has been put to on the Action of Debt on the Judgment.

Quere, Whether this be agreeable to the Practice, it being an Action on the Judgment and not an Execution or against Bail.

Curd *against* Eastmead.

Hil. 13 Geo. II.

ISSUE in Ejectment, Trial at the Summer Assizes in 1739, and Verdict for the Plaintiff, Writ of Error returnable *quinden' Martini* allowed 27 Oct. 1739, and Notice of the Allowance given to the Plaintiff's Attorney; Judgment signed the 26th of December, which was after the Return of the Writ of Error, and Possession delivered upon a Writ of *Habere facias Possessionem*. Held that the Judgment being of *Michaelmas* Term was affected by the Writ of Error; wherefore the Execution was set aside as Irregular, and Possession ordered to be restored, and the Plaintiff's Attorney to pay the Costs; but by Consent no Action to be brought. *Eyre* for the Plaintiff; *Agar* for the Defendant.

Writ of Error returnable in Michaelmas Term, Judgment signed in the Vacation following and Execution executed held irregular.

Hannot *against* Farrettes.

Trin. 10 Geo. II.

Borret.

The Defen-
dant charged
in Execution
notwithstand-
ing a Writ of
Error allow-
ed.

14 July

THE Defendant was brought into Court by Virtue of a Writ of *Habeas Corpus ad Satisfaciendum*, directed to the Warden of the *Fleet* in order to be charged in Execution; the Defendant said that he had brought a Writ of Error, and that the same was allowed on the 12th Instant, as appeared by a Note thereof from the Clerk of the Errors, and that therefore he ought not to be charged in Execution. *Cur'*, The Record is not transcribed, therefore the Defendant must be charged in Execution, and he was charged accordingly.

Mason *against* Simonds and others.

Easter 11 Geo. II.

Thomson.

Writ of Error
in the Name
of one De-
fendant in
a Joint Acti-
on, Leave to
take out Exe-
cution against
the other
Defendants.

JOINT Action against several Defen-
dants, the Plaintiff obtained a Ver-
dict against four of the Defendants, and
had 20 *l.* Damages given him; he re-
covered Judgment by Default against
another Defendant, and 5 *s.* Damages;
the

the four Defendants brought a Writ of Error in the Name of the last Defendant, who was not bound to put in Bail upon the Writ of Error, because the Judgment against him was by Default. Serjeant *Agar* moved that the Plaintiff, notwithstanding the Writ of Error, might have Leave to take out Execution against the four Defendants. Rule to shew Cause, which in *Trinity* Term following was made absolute on an Affidavit of Service.

Cramborn against Quennel.
Hil. 9 Geo. II.

Serjeant *Birch* moved that the Plaintiff might be at Liberty to take out Execution, the Plaintiff having recovered in this Court, and the Defendant having brought a Writ of Error, he alledged that by the Death of Chief Justice *Eyre* the Writ was abated. *Carth.* 404. 1 *Sid.* 168. *Allen* versus *Shaw.* 1 *Keb.* 658. *Tremain* versus *Sands.* *Dyer* 173. The Court made a Rule for the Defendant to shew Cause why the Plaintiff should not be at Liberty to take out Execution; which Rule was afterwards made absolute.

Error being
abated by the
Death of the
Chief Justice,
Leave given
to take out
Execution.

Hays *against* Thornton.

Hil. 9 Geo. II.

Thomson.

On Abate-
ment of Writ
Error by
Death of
Chief Justice,
Plaintiff can-
not take out
Execution
without
Leave.

THE Plaintiff recovered a Judgment in this Court, the Defendant brought a Writ of Error; by the Death of the Chief Justice the Writ of Error abated, and the Plaintiff, without applying to the Court for Leave, took out Execution. Serjeant *Belfield* moved that the Execution might be set aside; Serjeant *Wright* opposed the Motion, and insisted that the Writ being abated, the Plaintiff was at Liberty to take out Execution, and that there was no need of moving the Court for Leave to do it. Judge *Denton* cited a Case, *Brozen* against *Randal*, Hil. 1 Geo. 1. in this Court, a Writ of Error brought upon a Judgment recovered in this Court, abated by the Removal of *Trevor* from being Chief Justice of this Court, and thereupon the Plaintiff took out Execution without applying to the Court for Leave; when *King* came to be Chief Justice, the Court was moved to set aside the Execution, and the Judges were unanimous in their Opinion, that the Plaintiff could not take out Execution without

out applying to the Court for Leave ; whereupon, in the principal Cause, the Court made a Rule to set aside the Execution, and for Restitution of the Defendant's Goods.

Olerenshaw *against* Stampforth.

Hil. 9 Geo. II.

Cooke.

SERJEANT *Wright* moved that the Plaintiff might be at Liberty to take out Execution ; a Writ of Error had been brought, but the Chief Justice died before the Record was certified. Rule to shew Cause. *Birch* for the Defendant. *Cur'*, Let the Rule be made absolute. *Dyer* 173. 1 *Sid.* 168. 1 *Keb.* 658.

Leave to take out Execution Error abated by Death of Chief Justice.

Nipson *against* Quitter and others.

Mich. 1 Geo. II.

Foley.

THE Court was moved by the Plaintiff, for Leave to file his Warrant of Attorney ; the Case was this, The Plaintiff had obtained Judgment in this Court in *Trin.* 1726. the Defendant brought Error in *Trin.* 1727. and the want of a Warrant of Attorney was assigned for Error ; there had been a *Certiorari* taken out, and returned,

Leave to file Warrant of Attorney after Error brought, denied.

that there was no Warrant of Attorney; whereupon the Plaintiff applyed to the Court for Leave to file his Warrant of Attorney. After hearing *Chefshyre* for the Plaintiff, and *Whitaker* and *Raby* for the Defendant, and great Consideration had, the Court refused to let the Warrant of Attorney be filed.

Mackerel *against* Hammerton.
Hil. 10 Geo. II.

Thomson.

Ca' Sa', lodged after Error brought, irregular.

AFTER a Writ of Error brought the Plaintiff left a *Capias ad Satisfaciendum* with the Sheriff, in order to be returned *Non est inventus*, irregular. *Chapple* for the Defendant; *Eyre* for the Plaintiff.

Green *against* Upton.
Mich. 11 Geo. II.

Rule to transcribe may be served on the Plaintiff in Error.

MOTION to set aside a *Non Pros* in Error, because the Rule to transcribe was served on the Plaintiff in Error, and not upon his Attorney. The Court held the Rule to be well served, and refused to set aside the *Non Pros*. *Agar* for the Plaintiff; *Parker* for the Defendant.

Escape.

Escape.

Willis *against* Gambier, Warden of
the Fleet.

Hil. 8 Geo. II.

DEBT *against* the Warden of the Fleet for the Escape of *Isaac Meure*, Esq; charged in Execution. To Debt for Escape, Plea that Prisoner without Knowledge of Defendant escaped and before Knowledge of Escape returned and was detained till discharged on Debtors Act.

Plea, that after the Commitment in Execution, *Meure* against the Will and without the Knowledge of the Defendant, escaped; and before the Exhibiting the Bill, and before the Defendant had Notice of the Escape, the said *Meure* into Prison without the Knowledge of the Defendant returned, and was detained until he was discharged by the Court by Virtue of the Act for Relief of Debtors, with respect to the Imprisonment of their Persons.

Demurrer and Joinder.

Serjeant *Eyre*, Necessary to set forth the Petition upon the Act, as in Lord *Clinton's* Case, not to say only he is discharged, for Authority therein this Term *Nutt* and *Studman*, Replevin in this Court, set out there he had a Certificate signed by Virtue of the Act of Parliament, and the Court was of O-

pinion that it ought to be particularly shewn.

Serjeant *Hawkins*, This is a Plea of Excuse not Justification, admits with Serjeant *Eyre*, if fresh Pursuit and retaken before Action, it's purged, *aliter* in negligent Escape if brought before retaken; where there is fresh Pursuit it is proper to plead it, but here is none, the Defendant is said here to return before the Warden had Notice of the Escape, and so no fresh Pursuit could be. If Pursuit be made after Notice, tho' sometime before taken, 1 *Rolls Abr.* 809. *pl.* 3. 2 *Rolls Abr.* 682. *pl.* 4. *Godbolt* 177. it is said here without Notice, not only the Walls but the Rules are the Prison, so where he comes voluntarily or by fresh Pursuit it's all one, the Defendant is again in Custody. *Rex versus Huggins*, the Warden is bound to obey the Order of the Court. An Avowry is a Matter of Right, and the Party claims and justifies under it, and so not like this, which is an Excuse.

Serjeant *Eyre*, Brother *Hawkins* has shewn no Precedent of such a Plea, *Lenthal versus Lenthal*, 2 *Lev.* 109. is therefore in Point, if in fact such Prisoners have frequently returned to Prison, Evidence of a *Recapture* may be given

given, and may have weight with a Jury, but not to be pleaded so; as to his Return without Notice, he that has the Care of the Prison ought to know when his Prisoners go out; and here is no Merit in the Defendant, the Warden; *Godbolt's* Case is as stated, but there the Officer inquired soon after the Escape, tho' not taken till long after, so I think this is an Evidence of fresh Pursuit.

Eyre, Chief Justice, As to *Rud* and *Studman*, that was an inferior Jurisdiction, but this is the Common Pleas, therefore this is said to be sufficiently set forth, because said by the Court of Common Pleas, fresh Pursuit is not necessary to be set forth, what it might be upon Evidence, is another Thing. If the Fact can't warrant the Pleading, the Defendant on Trial must fail; suppose a Man escapes and returns the next Moment, shall not the Gaoler have the Benefit of it, will not this excuse as well as if fresh Pursuit, is it not the same Thing? I think it is.

Denton, This Plea is clearly within the Reason of pleading fresh Pursuit, and is substantially a good Plea.

Fortescue, of the same Opinion, as to the Warden's Merit that is not the Question, has he done any Thing against his

Escape.

his Office, had he pleaded fresh Pursuit when he had no Notice of the Escape, it would have been bad, for it is impossible he should pursue when he had no Notice of the Escape ; it is not necessary to say here, discharged according to Act of Parliament, if only said by a proper Authority, or by this Court, it is sufficient, the Replevin Case is not the like Case ; this is a good Plea by way of Excuse.

Reeve, This is a good Plea, but if the Escape had been voluntary, whether he had returned or had been taken on fresh Pursuit, it is nothing, the Action would be good. But agreed *per Cur'*, that if Action brought before retaken, good, tho' after retaken. I find no such Plea as this, but I think it the same in Substance ; here the Plaintiff suffers nothing, his Prisoner is in Execution again, the Reason is the same in both Cases, and I find no Authority to the Contrary. *Boynton's Case*, *Habeas Corpus* to bring the Prisoner to this Court ; at an Inn on the Road the Prisoner goes out of the Inn into another County, without the Privy of the Gaoler, and returns thither again, and is brought up at the Return of the Writ, and adjudged no Action lies against the Sheriff ; this seems to be
the

the same Case, only there he was not in Gaol. Discharge of the Court of Common Pleas is good, agrees with *Fortescue*, he is obliged to obey the Orders of this Court, and can't set the Matter forth ; therefore this is a good Plea.

Judgment for the Defendant.

Homines Hundred' de Lawres in
Com' Lincoln *versus* Shipman,
Ar' Vic' Com' Nottingham.
Trin. 5 Geo. II.

Foley.

AN Action was brought by the Hundred of *Lawres* against the Sheriff of *Nottinghamshire*, for the Escape of one *Charlton*, who was in Execution for the Costs of a Nonsuit upon an Action brought by *Charlton* for a Robbery pretended to be committed within the said Hundred. Verdict for the Plaintiffs at the Assizes. Serjeant *Skinner* moved in Arrest of Judgment, and insisted that the Statute did not give the Hundred Power to sue. Rule to shew Cause. *Eyre* for the Plaintiffs. 3 *Lev.* 362. 3. *Fitzb. Nat. Brev.* 32, 506. Statute of *Marlb.* 596. *Chapple* and *Skinner* for the

A Hundred
intitled to an
Action of E-
scape.

the Defendant. *Cur'*, The Hundred being liable to be made Defendants by the Statute of *Winton* and by subsequent Statutes to pay Costs, they ought in consequence to have Costs in Case of a Nonsuit, and to recover it either against the Plaintiff or against the Sheriff in Case of an Escape. And *Fortescue* said that the Statute by relation has made them a Body Corporate *quoad hoc*. Rule discharged.

Effoin.

In what Actions Defendant may Effoin.

May Effoin on Sumons or Pone not on both.

Ne Recipiatur.

AN *Effoin* lies in *Quare Impedit*, Partition, Waste, Debt against an Heir, or Case against a Corporation or Peer of the Realm, and upon the Statute of Hue and Cry, and in all other Actions and Cases where Process is by Summons, *Pone* and *Distringas*.

The Defendant hath Liberty to *Effoin* upon the Summons or *Pone*, but not upon both.

If a *Ne recipiatur* be entered upon the Summons there must be one also entered upon the *Pone*; but if there be *Effoin* cast upon the Summons and an Adjournment thereof marked thereon, there's no *Ne recipiatur* on the *Pone*.

There

There lies no *Essoin* upon the *Di-* No *Essoin* on
stringas. the *Distringas*

In all the aforefaid Actions between Adjournment
the Adjournment of the *Essoin* and the of the *Essoin*.
Procefs thereupon, there must be fif-
teen Days.

In Dower between the *Essoin* and
the Procefs thereupon, there must be
five Returns inclusive.

In *Formedon*, Writs of Right, *Aiel*,
Cofinage and all other Actions *de pl'ito*
terra, the Adjournment of the *Essoin*
must be nine Returns inclusive.

In *Formedon*, Dower and all other *Essoin* on
Actions *de pl'ito terra* there lies a Writ of View.
Writ of View, upon which the Attor-
ney for the Tenant hath Liberty to
Essoin.

An Adjournment of the *Essoin* or a *Ne*
recipiatur must be marked on the Writ
of View by the Clerk of the *Essoins*,
before any *Petit Cape* be made out.

Where there are several Tenants or Where several
Defendants they shall have their several Tenants shall
Essoins. have several
Essoins.

These Rules were laid down by
Mr. *William Hall*, Clerk of *Essoins*,
who had been in that Office many Years,
and well understood the Office. 12th
of *January* 1707.

Peter

Peter *against* Reginer, an
Administrator.

Mich. 11 Geo. II.

Cooke.

No Effoin lies
in a personal
Action.

SERJEANT *Bootle* moved to discharge
an *Effoin*, cast by the Defendant
in a Personal Action. *Cur'*, Let the
Effoin be quashed, the Defendant
ought not to have been Effoined; the
Defendant's Attorney being present and
hearing the Opinion of the Court, a-
greed to waive the *Effoin*.

Evidence.

Goodright *against* Skinner in
Ejectment.

Mich. 7 Geo. II.

Cooke.

Private Act of
Parliament,
Printed by
the King's
Printer, ad-
mitted as E-
vidence.

UPON Trial before the Chief
Baron in the *Western* Circuit
a Case was reserved, wherein he de-
sired the Opinion of this Court; the
Question was, Whether the Act of
Parliament for rebuilding the Town of
Tiverton in the County of *Devon*,
burnt down by the late Fire, Printed
by

by the King's Printer amongst the private Acts, was to be admitted as Evidence ? The whole Court agreed, that though it be a private printed Act as above, it ought to be received as Evidence, and though it had been produced single, Printed by the King's Printer, and not bound up in the Volume of Statutes, yet in that Case it ought to be admitted as Evidence, and founded their Opinion on the Case of the College of *Physicians* and *Modern Resolutions*. *Chapple* and *Glyde* for the Plaintiff; *Belfield* for the Defendant.

Langton *against* Marwood.

Trin. 13 Geo. II.

Borret.

Serjeant *Wynne* moved that the Writ of Inquiry might be set aside with Costs, because an Account witnessed was given in Evidence, and the Jury found to the Value, though the subscribing Witness was not produced to give Evidence, nor any Proof made that he was dead. Rule to shew Cause. *Birch* for the Plaintiff, the Defendant made a Defence at the Executing the Writ of Inquiry. *Cur'*, Let

An Account witnessed can't be given in Evidence without producing the Witness.

2 the

Execution.

the Writ of Inquiry be set aside, but without Costs.

Execution.

Cooper *against* Old & ux'.

Pasch. 13 Annæ.

On a Judgment against Baron and Feme the Wife may be taken in Execution.

TRESPASS and Assault against Baron and Feme, Verdict for the Plaintiff and Execution against the Husband and Wife, and the Wife taken in Execution; Motion that the Wife should be discharged. Adjourned, *Postea* 11 Junii Termino Trin. 13 Annæ. Chesbyre for the Plaintiff; Gooding and Selby for the Defendants. Agreed, if Wife taken on mesne Process she ought to be discharged, 16 Junii anno præd'. Agreed *per totam Cur'*, That the Wife is well charged in Execution, and ought not to be discharged. Carry & ux' versus Garbut. Trin. 4 Geo. 1. The like Resolution on a Verdict for the Defendant.

Berryman *against* Gilbert and his
Wife. East. 12 Geo. II.

Judgment *against* Baron and Feme Baron and Feme taken in Execution, Wife not to be discharged.
both taken in Execution. *Eyre*
moved that the Wife might be dis-
charged. Rule to shew Cause.
Wright for the Plaintiff. *Cur'*, Dis-
charge the Rule.

Marlergh *against* Harlin an Attor-
ney. Hil. 5 Geo. II.

Borret.

Judgment, the Plaintiff within the Where Part levied by Fi-
eri facias
Year levied Part by *Fieri Facias*,
after the Year was expired, he revived within the
Year, the
Plaintiff may
either con-
tinue down
the Execution,
or revive by
Scire facias.
the Judgment by *Scire facias*, and
took the Defendant in Execution on a
Capias ad Satisfaciendum for the Re-
sidue; the Defendant moved to be dis-
charged; and a Question arose, Whe-
ther the *Fieri facias* should not have
been continued down to the second Ex-
ecution, and whether a *Scire facias*
could regularly Issue after a Levy in
Part by *Fieri facias*? *Cur'*, The
Plaintiff need not have sued out a
Scire facias, but as he has 'tis not ir-
regular, 'tis more Notice to the Defen-
P. dant.

Execution.

dant. *Chapple* for the Plaintiff; *Eyre* for the Defendant.

Fulthorpe *against* Moore.

Mich. 6 Geo. I.

Defendant
brought up by
Habeas Corp'
ad fac' and re-
cip' charged
in Execution.

THE Defendant was brought up by the Marshal of the King's Bench on a *Habeas Corpus ad Faciendum & Recipiendum*; it was moved to the Judges in the Treasury whether the Defendant should be charged in Execution or not; agreed he should, and he was charged accordingly.

Oades *against* Forrest.

Mich. 6 Geo. II.

Thomson.

The Words of 13 Nov.
Testatum, &c.
needless in an
Execution.

UPON a *Scire Facias* against Bail. Motion to quash a *Fieri facias*, whereby the Defendant's Goods were taken in Execution. Judgment was obtained against the Defendant upon a *Scire facias* in *Middlesex*, a *Fieri facias* issued, directed to the Sheriff of *Middlesex*, to which he returned *Nulla bona*, the Award of the *Fieri facias* and the Return thereto were entered on the Roll, *Et sur Testatum, &c.* a *Fieri facias* was awarded into
Lon-

London, which was the *Fieri facias* now complained of; the Reason alledged for quashing it was that the usual Words *Testatum sit, &c.* were omitted in the Body of the Writ.

Cur', The Words *Testatum sit, &c.* are needless, the Writ is good without them.

Chief Justice to the Defendant, See what an Inconvenience you have brought upon yourself by becoming Bail, which you might have excused yourself from to your Client, by telling him you was an Attorney, and could not for that Reason be Bail; you are not an Attorney of this Court but of the King's Bench, or else we should have refused you for your own Benefit.

Cur', We will look into the Rule, and if it does not extend to all Attornies we will make it so, for the Benefit of all Attornies.

Note; This Term a General Rule was accordingly made, that no Attorney of this or any other Court, nor any Person practising as such, should be Bail in any Action or Suit depending in this Court.

Bond *against* Jacobs.
Trin. 8 & 9 Geo. II.

Thomson.

Execution in-
to a Foreign
County regu-
lar, though it
did not appear
to be a Testa-
tum.

A *Fieri facias* into a Foreign Coun-
ty held to be regular, though it
did not appear to be a *Testatum*; a
Fieri facias into the proper County
appearing to have been issued and re-
turned. *Chapple* for the Defendant;
Eyre for the Plaintiff.

Boyce *against* Hall.
Hil. 6 Geo. II.

Thomson.

Execution set
aside, Plaintiff
having agreed
to take a
Weekfy Sum.

MOTION to set aside an Exe-
cution. Subsequent to the taking
out the Execution, and before it was
executed, the Plaintiff had entered into
an Agreement in Writing, to forbear
executing the *Fieri facias*, if the De-
fendant would pay him 4 s. *per* Week,
which Sum the Defendant constantly
paid or tendered to the Plaintiff; the
Plaintiff thinking that this Agreement
would not bind him, took the Defen-
dant's Goods in Execution. *Cur'*, As
the Plaintiff has entered into this A-
greement, and it is reduced into Wri-
ting, we will hold him to it; there-
fore

fore let the Execution be discharged.
Eyre for the Defendant ; *Skinner* for
 the Plaintiff.

Daking *against* Thornhill.
 Easter 6 Geo. II.

Thomson.

DEBT on a Bond, Judgment for the Plaintiff, Execution for the Penalty and Costs, whereby the Plaintiff caused to be levied the Principal, Interest, his Attorney's whole Bill amounting to 37 £ 10 s. (though the Prothonotary had allowed but 21 £ .) and the Sheriff's Poundage. Serjeant *Chapple* for the Defendant moved that 16 £ 10 s. levied more than the Costs taxed should be restored to the Defendant. Rule to shew Cause. *Eyre* for the Plaintiff insisted, that as the whole Penalty was recovered, and the Defendant had obtained an equitable Rule, he ought to do Equity, and it was but Equity that the Plaintiff should not be out of Pocket, and if the Bill is to be taxed it ought to be taxed as between Attorney and Client, and not as between Party and Party. *Cur'*, Let it be refer'd by Consent to the Prothonotary to allow as he shall see fit, and it is but

On Execution upon a Judgment on a Bond Plaintiff by the Penalty may levy his full Costs and Poundage.

reasonable to allow Costs, as between Attorney and Client.

Bevan against Jones.

Trin. 13 & 14 Geo. II.

Plaintiff by
Virtue of a
Penalty may
levy full Costs,
Poundage, &c.

DEBT on a Bond, Judgment and Execution; the Plaintiff by Virtue of the Penalty may levy his full Costs, the Poundage, &c. *Birch* for the Plaintiff; *Belfield* for the Defendant.

Hann against Capel.

Hil. 7 Geo. II.

Thomson.

Warrant on a
Fieri facias
being altered
after it was
sealed, no
Goods there-
by in Execu-
tion.

THE Defendant's Goods being taken in Execution, Serjeant *Skinner* moved that the Landlord might be paid his Rent out of the Money levied. Rule to shew Cause. Serjeant *Belfield* for the Sheriff. On shewing Cause it appeared that the Sheriff's Warrant on the *Fieri facias* had been altered after it was sealed, and a new Bailiff's Name inserted in it. *Cur'*, As the Warrant was altered no Goods were taken in Execution, let the Bailiff and the Attorney who were Privy to the Alteration, shew Cause why an Attachment should not go against them,
Anony-

Anonymus.

Easter 11 Geo. II.

IF the Plaintiff or Defendant be alive after Execution taken out, and die before executed, yet it may be executed before the Continuance or Return-Day. Execution may be executed after the Party's Death if alive when sued out.

Richard *against* Davis.

Trin. 11 & 12 Geo. II.

Thomson.

THE Plaintiff recovered Judgment in this Court, then brought an Action of Debt on the same Judgment in the Mayor's Court of the City of *Worcester*, and arrested the Defendant thereon, and afterwards took out Execution in this Court. Serjeant *Skinner* moved that the Execution should be set aside. *Cur'*, Take a Rule for the Plaintiff to shew Cause why he should not make his Election. Execution in this Court, and Debt on the Judgment in another Court, Plaintiff to make his Election.

Habeas Corpus.

Hobbs *against* Williams.
Trin. 10 Anna.

The Plaintiff
can't remove
his Cause by
Habeas Cor-
pus.

Habeas Corpus brought by the Plain-
tiff, Declaration delivered, and
Judgment signed, but all set aside as
irregular, because the Plaintiff having
once made his Election can't remove his
own Cause; besides there is no Process
to bring the Defendant into Court, as
there is in Case of a *Recordari facias*
Loquelam.

Harvey *against* Condy the Elder.
Trin. 3 & 4 Geo. II.

Borret.

Habeas Corp'
cum Cauſa
quashed, ha-
ving too long
a Return.

16th June. **H**abeas Corpus *cum cauſa* to an
inferiour Court, bearing Teſte
the first Day of this Term, and return-
able *Tres Michaelis*, allowed below,
when the Cause was ready for Trial;
there was an Affidavit that the Defen-
dant was 76 Years of Age, and of the Fact
and of Notice of the Motion. *Cur'*, Let
the

Habeas Corpus.

217

the Defendant shew Cause to Morrow why the *Habeas Corpus* should not be discharged, and let the Attorney attend then in Court. On the Morrow, upon hearing Counsel on both Sides, *Cur'*, Let the *Habeas Corpus* be set aside, and by Consent let the Rule as to the Attorney be discharged.

Wyat against Markham.

Trin. 7 & 8 Geo. II.

Thomson.

Habeas Corpus cum Causa to Boston Borough Court. Serjeant Wright moved for a *Procedendo*, for that Interlocutory Judgment was signed in the inferior Court before the *Habeas Corpus* was brought. Rule to shew Cause. Baynes for the Defendant. *Cur'*, The *Habeas Corpus* came too late after Interlocutory Judgment signed, the Rule must be absolute for a *Procedendo*. Stat. 43 Eliz. c. 5. 21 Jac. I. c. 23.

Habeas Corp'
cum Causa af-
ter Interlocu-
tory Judg-
ment, too late.

Habeas Corpus.

William Day's Case.

Mich. 8 Geo. II.

Cooke.

Prisoner
brought up by
Habeas Corp'
not to be re-
ceived before
the Return.

ON the fourth of *November* *William Day* was brought, at his own Request, into Court, by the Sheriff of the County of *Southampton*, by Virtue of a Writ of *Habeas Corpus*, returnable in Court on *Thursday* next after fifteen Days of *St. Martin*, being the last Day of 'Term. *Cur*', We will not receive him before the Return of the Writ.

Hewit against Powell.

Mich. 8 Geo. II.

Cooke.

Prisoner may
be brought in-
to Court on a
Habeas Corp'
at any Time
between the
Return and
Appearance-
Day.

Habeas Corpus returnable from the Day of *St. Michael* in one Month, which was *Sunday* the 27th of *October*, by Virtue of which Writ the Defendant was brought into Court and committed on the *Monday*, the Court saying that the Defendant might be brought in at any Time between the Return-Day and Appearance-Day.

Isaac

Isaac Hope's Case.

Mich. 8 Geo. II.

Cooke.

Isaac Hope being in the Custody of Prisoner of the Sheriff of the County of ^{bringing a} *Warwick*, brought a *Habeas Corpus* ^{Habeas Corp'} in Order to remove himself into the ^{must either} *Fleet*; the Sheriff brought him into ^{pay the Sheriff's Fees or} Court, and insisted to be paid his Fees, ^{be remanded.} for bringing the Prisoner up, before he should be committed. *Cur'*, The Prisoner being brought up at his own Desire, must either pay the Sheriff 1 s. *per* Mile for bringing him up, or be remanded; the Prisoner not being able to pay the Sheriff's Fees was accordingly remanded. Stat. 31 *Car.* 2. c. 2.

King's Case.

Hil. 10 Geo. II.

Cooke.

Nicholas King being a Prisoner in Attachment the Prison of *Newgate* in the ^{against Sheriff} City of *Bristol*, brought a *Habeas* ^{for not bringing up a Prisoner pursuant to a Habeas Corpus on Tender of 1 s. per Mile.} *Corpus* directed to the Sheriffs of that City, returnable in this Court; *King* tendered to the Sheriff 7 l. 7 s. for bringing him up (which was more than is allowed by the Statute, which is but

1 s.

Habeas Corpus.

1 s. *per* Mile) the Sheriff refused to accept the Money, and demanded 10 l. *Eyre* and *Corbet*, Serjeants, for *King*, moved that an Attachment might Issue against the Sheriffs. Rule to shew Cause. *Draper* for the Sheriffs said, that *Bristol* was 104 Miles distant from *London*, that the 7 l. 7 s. was not a sufficient Recompence; and that *Fling* had not given any Security, as the Act required, to return, in case the Court should remand him. *Cur'*, The Sheriffs ought to have obeyed the Writ, and not made themselves Judges, the Court would have done them Justice; therefore let an Attachment go, whereupon *Draper* offering to pay the Costs, and bring a new *Habeas Corpus* at the Sheriffs Expence, it was ordered that the Attachment should be staid for 10 Days, and that the Sheriffs should be allowed 5 l. 4 s. which is after the Rate of 1 s. *per* Mile for bringing *King* up.

Turn-

Turner *against* Bean.

East. 13 Geo. II.

Thomson.

HELD *per Cur'*, That on a *Cer-* On Certiorari
tiorari or *Habeas Corpus* the or *Hab' Corp'*
 Plaintiff may declare in this Court as Plaintiff not
 he pleases, and is not confined to the tied to the
 same Species of Action he declared in Cause of Ac-
 below, though the Parties were at Issue tion below,
 in the Court below. *Bootle* for the may declare
 Defendant; *Skinner* for the Plaintiff. as he pleases.

Homine Replegiando.

Hat & ux' *versus* Lyset.

Mich. 1 Geo. II.

Cooke.

THE Plaintiff having clandestinely Proceedings
 married the Defendant's Daugh- in Homine
 ter, who was about thirteen Years of replegiando.
 Age, the Father got her into his Cu-
 stody; upon this the Plaintiff moved
 the Court, and obtained a Writ *de*
Homine replegiando, which was deli-
 vered to the Sheriff of *Berks*, and af-
 ter that an *Alias & Pluries*, on the
Pluries he returned an *Elongavit*, upon
 which the Filacer made out a *Capias*
 in

Homine Replegiando.

The Recognizance and Condition on the Capias in Withernam.

in Withernam, whereupon the Defendant was arrested and in the Custody of the Sheriff; the Defendant moved for a *Habeas Corpus*, which was granted, and he was thereupon brought into Court in order to be bailed; he insisted that the Plaintiff should declare against him, and thereupon the Plaintiff's Attorney delivered a Declaration into Court; then the Plaintiff insisted that the Defendant should plead before he was admitted to Bail; whereupon the Defendant pleaded *Non cepit*, and then put in Bail himself in 500*l.* The Recognizance was taken in this Manner, *viz.* You acknowledge yourself to be indebted to the Plaintiff in 500*l.* to be levied upon your Goods and Chattels, Lands and Tenements, to the Use of the Plaintiff, upon Condition that you shall appear from Day to Day in this Court; and if it shall happen that Judgment shall be given against you in this Cause, you shall render your Body *in Withernam*, to remain in Custody until you render *Sarah* the Wife of the Plaintiff, and permit her to go at Large. The Defendant likewise put in Bail in 250*l.* which Bail were Sir *John Eyles*, Bart. *Benjamin Styles*, Esq; Sir *Conrade Springal*, Knt. *Benjamin Haskin Styles*, Esq; and *Joseph Chitty*

Chitty, Esq; the Condition of whose Recognizance was as follows, *viz.* You and each of you acknowledge yourselves to be indebted to the Plaintiff in the Sum of 250 *l.* to be levied on your and each of your Goods and Chattels, Lands and Tenements, to the Use of the Plaintiff, upon Condition that the Defendant shall appear from Day to Day in this Court, and if it shall happen that Judgment shall be given against the Defendant in this Cause, he shall render his Body *in Withernam*, to remain in Custody until he render *Sarah* the Wife of the Plaintiff, and permit her to go at large; and thereupon the Defendant was discharged out of Custody.

Ilut & ux' versus Lyset.
Hil. 2 Geo. II.

Cooke.

IN a *Homine Replegiando*, the Defendant pleaded *Non cepit*, whereupon Issue was joined, and at the Trial the Plaintiff was Nonsuited. And now the Question was, Whether the Defendant should have his Costs by the Stat. 4 *Fac.* On hearing *Hawkins* for the Plaintiff, and *Corbet* for the Defendant, the Court said this was no more than

In *Homine Replegiando* Plaintiff Nonsuited at Trial, the Defendant shall have his Costs.

Homine Replegiando.

a common Replevin, and the Defendant must have his Costs.

Wife and his Wife *against* Lawrence and three others.

Hil. 6 Geo. II.

Cooke.

Bail by Baron and Feme, and by Guardian for an Infant, to a Capias in Withernam.

THE Defendants being arrested on a *Capias in Withernam*, after an *Elongaverunt* returned on a *Pluries in Homine Replegiando*, were brought into Court on a *Habeas Corpus*, they called upon the Plaintiff to declare *instante*, which he did; the Defendants then pleaded *Non ceperunt*, and were thereupon admitted to Bail. One of the Defendants was a Minor and admitted by Guardian, and the Guardian entered into a *Recognizance* for the Minor; two other of the Defendants who were of Age entered into a *Recognizance*, the other Defendants being Husband and Wife, the Husband entered into a *Recognizance* for himself and his Wife, then their Bail entered into a *Recognizance*, and the Defendants were discharged.

Impar-

Imparlance.

Sibson *against* Neven.

Mich. 10 Geo. II.

Cooke.

MOTION for an Imparlance, the Imparlance
Action was brought for Words, granted in
accusing the Plaintiff of the Murder of Slander for
the Defendant's Husband upon the charging the
High-Seas; the Plaintiff had been com- Plaintiff with
mitted for the Murder by the Judge of Murder, the
the Admiralty, and was now in Cu- Plaintiff be-
stody to be tried for the same at the ing indicted
next Session of the Admiralty for Of- for the Mur-
fences committed upon the High-Seas, der.
after which Commitment this Action
was brought. *Cur'*, If the Plaintiff at
his Trial be convicted, this Action will
signify nothing, if he be acquitted the
Acquittal will be of Service to him in
this Action; this may be an Artifice to
sift what Evidence the Prosecutrix has
to produce on the Indictment, for upon
a Justification the Defendant must
produce the same Evidence as upon
Q the

Informers.

the Indictment. *Cur'* unanimous in granting an Imparlance.

Informers.

Bland *qui tam* against Featherstone.
Mich. 10 Geo. II.

Borret.

Leave to compound on a *qui tam*.

ACTION *qui tam* on the Statute of Usury, the Defendant pleaded. Serjeant *Draper* moved on the Stat. 18 *Eliz.* that the Prosecutor might have Leave to compound, such Compounding being Penal without Leave. *Booth* for the Plaintiff, we do not oppose it. *Cur'*, Be it so by Consent.

Issue.

Issue.

Ellison *against* Cornish.

Hil. 3 Geo. II.

SERJEANT *Chapple* for the Plaintiff, moved to set aside a *Non Pros* for Irregularity, the Irregularity complained of was that the *Non Pros* was signed before the Rule for entering the Issue was out; the Rule was *Nisi quer' causaverit exitum de recordo intrari infra quatuor dies prox' post notitiam hujus regule, &c.* the *Non Pros* was signed the fourth Day. The Court held that the Plaintiff had four Days to enter his Issue exclusive of the Day of Notice.

On a Rule to enter the Issue the Plaintiff has four Days to enter it, exclusive of the Day of Notice.

Fox and another, Assignees of the Sheriff, *against* Lewing.

Easter 3 Geo. II.

Cooke.

DEBT on a Bail-Bond, the Defendant pleaded *Comperuit ad Diem*, the Plaintiff replied *Nul tiel Record'*, and by his Replication prays an Inspection of the Record in the

On a Replication of *Nul tiel Record'* in the same Court, there is a complete Issue and no need of a Plea. Rule to rejoin.

Plea. Rule for Judgment for the Plaintiff, *Nisi*. The Defendant moved to set aside the Judgment, because there was no Rule to rejoin given, as the Practice of the Court required; and it was agreed to be the usual Practice to give a Rule to rejoin; the Plaintiff's Counsel insisted that there was a complete Issue since the Record in the Defendant's Plea was in the same Court. *Cur'*, There is no Occasion to give a Rule to rejoin where the Record is in the same Court, if it had been in another Court there must. Rule for Judgment absolute. *Belfield* for the Plaintiff; *Hawkins* for the Defendant.

Newberry and his Wife *against*
Strudwick. East. 9 Geo. II.
Thomson.

On Replication of Nul tiel Record the Plaintiff may deliver the Issue, and need not give a Rule to rejoin.

DEBT on a Judgment, the Defendant pleaded a Record in *Banco Regis*, the Plaintiff replied *Nul tiel Record*, and delivered the Issue with a Day for the Defendant to bring in the Record. Serjeant *Belfield* for the Defendant, moved that the Plaintiff might take back the Issue and return the Money paid for it, insisting that the Plaintiff should have delivered the Replication separately by it self, and

and given a Rule to rejoin. *Cur'*, Take a Rule for the Plaintiff to shew Cause. *Corbet* for the Plaintiff, the Question on shewing was, Whether there was any Difference in this Respect between pleading a Record of this Court and pleading a Record of another Court? *Cur'*, The paying for the Issue and keeping it has answered the Objection, but it does not seem necessary to deliver a Replication in Form, and give a Rule to rejoin.

Bastard an Attorney *against* Bartlet.

Trin. 3 & 4 Geo. II.

Borret.

Serjeant *Chapple* moved *quod par-* Variance be-
scatur Judicium super Veredict' pro tween Issue
quer', for a Variance between the Is- delivered and
sue delivered and the Record of *Nisi* the Record of
Prius, 'twas in the Award of the *Nisi Prius* in
Venire Facias, in the Issue delivered the Award of
'twas awarded returnable in *Octab'* the *Venire fa-*
Pur', but in the Record of *Nisi Prius* *cius*, not ma-
'twas said to be returnable *die Jovis* terial.
prox' post Oct' Pur'. Rule to shew
Cause. Serjeant *Cheshyre* for the Plain-
tiff shewed Cause, and said the Award
of the *Venire facias* was out of the
Issue and of no Consequence. *Cur'*,
Discharge the Rule.

Q 3

Ham-

Hammersley *against* Mallory an
Attorney. Mich. 4 Geo. II.

Defendant's
Attorney must
pay for Issue
immediately
and receive it
de bene esse.

DEclared *per Cur'*, That if the Plaintiff's Attorney tender the Issue to the Defendant's Attorney, the Defendant's Attorney must pay the Money for it immediately, and accept the Issue *de bene esse*, and if the Pleadings and the Issue do not agree, he may return the Issue the next Morning.

Ryder *against* Somerfield.
Mich. 7 Geo. II.

Thomson.

Defendant
must pay for
the Issue tho'
over-charged.

Judgment was signed for not paying for the Issue. Serjeant *Corbet* moved that the Judgment might be set aside, alledging that the Issue was over-charged, *viz.* 6*d.* per Sheet, *i. e.* 4*d.* per Sheet for the Issue and 2*d.* per Sheet for Duty, though the Issue was wrote close and only one Stamp used. The Court refused to set aside the Judgment, and said the Defendant should have paid the whole Demand, and if he was over-charged he might have applied to the Court, and they would have done him Right, but the Judgment was set aside on Payment of Costs, &c.

Kirk

Kirk *against* Pomfret and Rushby.
East. 4 Geo. II.

Serjeant *Glyde* moved to set aside a Judgment signed irregularly; the Case was this, The Defendants delivered two several Pleas of *Non cul* by the same Attorney to the Plaintiff's Attorney; the Plaintiff's Attorney makes up the Issue and joins the Defendants in one Plea, and tenders such Issue to the Defendants Attorney who refuses to accept and pay for it, because the Pleas were not separately entered in the Issue, whereupon the Plaintiff's Attorney signs Judgment. Upon hearing Serjeant *Corbet* for the Plaintiff, the Court held the Judgment to be irregular, for that the Pleas being separate the Plaintiff should have made them separate in his Issue, and not having done so, the Defendants Attorney was not bound to accept the Issue, and therefore the Judgment was set aside.

Two Defendants by the same Attorney deliver two separate Pleas of *Non cul*, they must be entered separate in the Issue.

West *against* Smithfield.

Hil. 5 Geo. II.

Cooke.

Issue not being
entered of the
same Term it
is joined, no
Reason to set
aside the Ver-
dict.

ISSUE was joined in *Hil. 4 Geo. 2.* the Plaintiff's Attorney made up the Record of *Trinity* Term following, and tried the Cause at the Summer Assizes. Serjeant *Eyre* moved that the Verdict might be set aside, the Issue not being entered of that Term in which it was actually joined pursuant to the Rules, *East. 5 W. & M. & Hil. 11 G. 1.* and cited the Case of *Lowther* and *Dawson* in this Court, where the Verdict had been set aside with Costs. *Chapple* and *Belfield* for the Plaintiff said that that Case differed from the present Case, for in this Case the Defendant had made a full Defence at the Trial, and that the Rules of *East. 5 W. & M. & Hil. 11 Geo. 1.* was against the Attornies and not against the Suitors, and the Court was of that Opinion, and therefore discharged the Rule for shewing Cause. The Court seemed to think the Rules of *East. 5 W. & M. & Hil. 11 G. 1.* was wrong, and said that if the Defendant or Clerk of the Treasury should move against the Attorney, they would not make any
Order

Judgment.

233

Order against the Attorney, but rather discharge the Rule ; *sed quare.*

Judgment.

Lincoln *against* Cock.

Mich. 13 Geo. I.

15 Nov. **S**erjeant *Baines* moved the Court to discharge a *Par-*
catur, entered upon the Motion of Serjeant *Raby* ever since the 27th of *Oct. hoc Termino*, whereby the Plaintiff had been delayed signing his Judgment ; the Defendant shewed to the Court that he had good Cause to proceed upon, which was an Order of Assize for a Reference, but that the Associate not being in Town it was not signed, so the Court continued the *Parcatur*, but told the Serjeants at the Bar, that for the future they would allow of no *Parcatures*, and directed the Secondaries to enter none.

No *Parcatures* to be entered for the future.

Olivant

Olivant *against* Low, Administrator.
Hil. 6 Geo. II.

Cooke.

Leave to plead
Plene Admi-
stravit after
regular Judg-
ment set aside.

THE Defendant being an Administrator, had pleaded *Plene Administravit*, Judgment was signed for not paying for the Issue. Rule to shew Cause why it should not be set aside. On shewing Cause it appeared that the Judgment was regular, but the Defendant desiring to be let in to try the Cause on Payment of Costs, the Plaintiff insisted that the Defendant should plead the General Issue, and withdraw his Plea of *Plene Administravit*; but the Court said they would not alter the Defence, and ordered the Judgment to be set aside on Payment of Costs. *Hawkins* for the Defendant; *Skinner* for the Plaintiff. *Vide Postea* 236.

Smith *against* Parret, Administra-
trix. Mich. 10 Geo. II.

Cooke.

Judgment a-
gainst an Ad-
ministratrix
set aside on
Payment of
Costs only,
tho' Inquiry
executed.

SERJEANT *Draper* moved to set aside a Judgment upon Payment of Costs, opposed by *Chapple* and *Haywood*, who said that in this Case a Writ of Inquiry of Damages was executed, and there-

therefore the Course of the Court was that the Defendant should bring the Damages found on the Inquisition into Court. *Cur'*, The Administratrix is only liable as far as She has Assets and therefore is out of the common Case, where if an Inquiry is executed the Money is brought into Court ; let the Judgment be set aside on Payment of Costs only.

Leaver *against* Whitaker.

Mich. 10 Geo. II.

Cooke.

THE Plaintiff had obtained a Judgment set aside on Payment of Costs and Pleading an Issuable Plea ; the Defendant pleaded the Statute of Limitations. *Cur'*, This is not an Issuable Plea within the Meaning of the Rule for the future when a Judgment is set aside on Payment of Costs, instead of pleading an Issuable Plea, the Rule shall be Pleading the General Issue, and this was the old Practice of the Court.

Cruse

Cruse *against* Williams an Executrix. Hil. 13 Geo. II.

Borret.

Regular Judgment against an Executrix set aside on Payment of Costs, and Leave to plead a general Plene Administravit.

THE Plaintiff obtained a regular Judgment against the Defendant. Serjeant *Hussey* moved that the Judgment might be set aside on Payment of Costs, and that the Defendant might have Leave to plead a special *Plene Administravit*. Rule to shew Cause. *Belfield* for the Plaintiff. *Cur'*, Where a regular Judgment is set aside the Defendant should not be permitted to plead any Thing but the General Issue, in the Case of an Executor or Administrator, a *General Plene Administravit* is to be deemed a General Issue. It was ordered that the Judgment should be set aside on Payment of Costs, and that the Defendant might plead *Plene Administravit* generally.

Gibbon

Gibbon *against* Bond, and the Bishop of Bath and Wells.

Hil. 6 Geo.

Borret.

IN a *Quare Impedit* a Judgment was entered by Virtue of a Warrant of Attorney, which Warrant upon a Trial on a feigned Issue was found to have been forged. Serjeant *Chapple* moved that the Judgment might be vacated; the Court upon Consideration ordered a *Vacatur* to be entered in the Margin of the Judgment, which the Secondary did in Court.

Coulson *against* Turnbull and others. Hil. 7 Geo. II.

Thomson.

JOINT-Action, Judgment against all the Defendants; one of the Defendants had no Notice either of the Writ or Declaration. *Wynne* and *Wright*, Serjeants, moved that the Judgment might be set aside. Rule to shew Cause. Serjeant *Eyre* for the Plaintiff insisted that the Application came too late, for that a Writ of Inquiry had been executed. *Cur'*, The Judgment can never

Judgment vacated.

Judgment in a Joint-Action if irregular against one Defendant must be set aside as to all.

Judgment set aside for Irregularity after Inquiry executed.

ver be good as to him that was not served, and as the Judgment is Joint it must be set aside as against all the Defendants.

Camp qui tam *against* Gale.

Trin. 7 & 8 Geo. II.

Cooke.

No Motion in Arrest of Judgment on the last Day of a Term without Notice.

MOTION by Serjeant *Chapple* in Arrest of Judgment on the last Day of the Term, without any Notice of the Motion. *Cur'*, Take a Rule to stay the Entry of the Judgment till Cause is shewn, but for the future we will not receive any Motion in Arrest of Judgment on the last Day of a Term, unless Notice of the Motion be given.

Misaubin *against* Costa.

Mich. 8 Geo. II.

Cooke.

Judgment upon a Non Prosata Trial signed after Plaintiff's Death who died before the Day in Bank, must be reversed by Writ of Error.

THE Plaintiff was Non-suited at Trial, and before the Day in Bank, died; after the Plaintiff's Death the Defendant signed his Judgment. Motion to set this Judgment aside; it was said for the Defendant that this is Error, and not Irregularity. *Eyre* for the Plaintiff; *Skinner* for the Defendant.

Judgment.

239

dant. Adjudged *per Cur'*, that this is Error, and not Irregularity, and therefore must be reserved by Writ of Error, and not upon Motion, and so refused to set the Judgment aside. *Carth.*
149.

Bray *against* Booth.
Mich. 9 Geo. II.

Borret.

THE Defendant pleaded a Tender of 6*s.* but did not bring the Money into Court, he gave a Rule to reply, and for want of a Replication signed a *Non Pros*; the next Day the Plaintiff signed Judgment, looking upon the Plea as a Nullity, because the Money was not brought into Court. Serjeant *Glyde* moved that this Judgment might be set aside, for that the Plaintiff was out of Court by the *Non Pros*, which was signed before the Judgment, This was denied by *Fortescue* and *Denton*, (the Chief Justice being absent) though *Reeves* thought that the *Non Pros* ought to have been discharged before the Plaintiff could sign Judgment. No Rule. Serjeant *Wright* for the Plaintiff, moved that the *Non Pros* might be set aside, the Money not being paid into Court. Rule to shew

Judgment signed after an irregular *Non Pros*, and held good.

On a Plea of Tender the Money must be brought in to Court.

Judgment.

shew Cause. Serjeant *Glyde* for the Defendant produced an Affidavit, whereby it appeared that the Defendant had tendered the 6 s. to the Plaintiff, and offered to pay it into Court if he insisted on it, and that the Plaintiff's Attorney promised to take no Advantage of the Money's not being paid into Court; but notwithstanding this the Court held the *Non Pros* to be irregular, and ordered it to be set aside.

Craven *against* Henley.
East. 10 Geo. II.

Borret.

Verdict for the Defendant, on a bad Justification confessing the Trespass, set aside, and Judgment entered for the Plaintiff.

Action of Trespas for entering the Plaintiff's Land and eating up his Hay.

The Defendant justified, and said that the Plaintiff gave him Leave to put his Cattle into the Plaintiff's Close to eat up the Fog there growing, that the Plaintiff's Fences being out of Repair, the Defendant's Cattle strayed to the Plaintiff's Haycock and eat his Hay.

Verdict for the Defendant.

Motion in Arrest of Judgment.

Cur', The Defendant had a Licence only for his Cattle to eat up the Fog, he ought to have watched his Cattle and taken Care they did no Damage.
Noy 98. *Popham* 151. *Vent.* 44,

Judgment.

241

308. a. Sir *William Jones*; here is a Trespass confessed, the Justification of the Trespass is bad, therefore although there is a Verdict for the Defendant, it must be set aside, and Judgment entered for the Plaintiff; and he must have a Writ of Inquiry, *Carth.* 370.

Anonymus.

Easter 11 Geo. I.

TOO late to move to set aside an Interlocutory Judgment, after final Judgment signed.

Motion to set aside Interlocutory Judgment is too

late after final Judgment.

Anonymus.

Mich. 12 Geo. I.

AFTER a Writ of Error is brought, it is too late to move to set aside the Judgment, though the Writ of Error be not allowed; after Motion in Arrest of Judgment, it is too late to move for a new Trial.

Judgment not to be set aside on Motion after Error brought. Nor new Trial after Motion in Arrest of Judgment.

R

Grimes

Grimes *against* Cleaver.

Trin. 10 & 11 Geo. II.

Thomson.

Motion to set
aside Judg-
ment for Irre-
gularity must
be made two
Days before
Day of execu-
ting Inquiry.

DETERMINED by the Court that a Motion to set aside a Judgment for Irregularity, must be made two Days before the Day of executing the Writ of Inquiry.

Craven *against* Henley.

Mich. 11 Geo. II.

Borret.

Judgment en-
tered nunc
pro tunc, the
Defendant
dying whilst
the Court
took Time to
consider on a
Motion in
Arrest of
Judgment.

ON a Motion in Arrest of Judgment in this Cause, *quod vide antea*, fo. 240. the Court took Time to consider, in the mean Time the Defendant died, the Matter being determined by the Court; the Plaintiff moved that Judgment might be entered *nunc pro tunc*. *Eyre* for the Plaintiff; *Parker* for the Executor of the Defendant. 1 *Sid.* 162. *Raller v. Delander*, Trin. 1 Geo. B. R. *Taylor and Mathews*, Hil. 2 Geo. B. R. *Harrison v. Wilcox*, Pas. 1 Geo. 2.

Ch. 7. If the Party be intitled to his Judgment, and only delayed by the doubting of the Court, it would be very hard that he should suffer; therefore I think Judgment should be entered *nunc pro tunc*.

Denton

Denton of the same Opinion.

Comyns of the same Opinion.

Fortescue, 1 *Vent.* 90. The Party is guilty of no Fault, and it is for the Furtherance of Justice : Whenever it is the Delay of the Court, the Party ought not to suffer. *Hil.* 11 *Anne.* The Queen against the Inhabitants of *Hornsey*, the Judgment was entered 35 Years after. I do not think we are obliged to take judicial Notice of the Death of the Defendant.

Fowler *against* Whadcock.

Hill. 14 *Geo.* II.

Borret.

SERJEANT *Bootle* moved for Leave to Leave to enter Judgment *nunc pro tunc* ; nunc pro tunc the Cause was tried before Chief Justice *Eyre* ; the Defendant had brought a Bill in Equity, and obtained an Injunction, which was not dissolved till *May* last ; *Higham* the Associate being dead, Search had been made for the *Postea* to no Purpose, till 10 *Nov.* last, when it was found. Rule to shew Cause. *Draper* for the Defendant said the Plaintiff might have signed Judgment without Breach of the Injunction. *Cur'*, Let the Rule be discharged.

Roundle *against* Powell.

Mich. 11 Geo. II.

Thomson.

Judgment on an old Warrant of Attorney entered on an Affidavit that the Defendant was alive in Jamaica three months before
Serjeant *Bootle* moved for Leave to enter a Judgment on a Warrant of Attorney, the Defendant was in *Jamaica*, and an Affidavit was produced made by a Person who saw the Defendant alive in *Jamaica* three Months ago. *Cur'*, Let the Judgment be entered.

Coppendale *against* Sunderland.

Hil. 12 Geo. II.

Thomson.

Judgment entered on an old Warrant and upon Affidavit of the Money being unpaid made by a third Person, the Plaintiff being a Lunatic.
Serjeant *Agar* moved for Leave to enter up Judgment on an old Warrant of Attorney; the Plaintiff being a Lunatic, an Affidavit that the Money was unpaid was made by a Person, who had received the Interest due on the Bond for — Years, ever since the Plaintiff's Lunacy, which Affidavit should otherwise have been made by the Plaintiff. *Cur'*, Let the Judgment be entered up.

Smith

Smith and Others *against* Smith.

Trin. 13 Geo. II.

Cooke.

A Verdict was given for the Plaintiff at the Assizes for Security only; the Plaintiff entered up the Judgment, and now brings a *Scire Facias* upon the Judgment. Serjeant *Skinner* moved, that the Proceedings might be set aside. Rule to shew Cause. *Eyre* for the Plaintiff. *Cur'*, The Proceedings must be set aside, 'tis the constant Practice, the Plaintiff should not have entered up this Judgment without Leave of the Court.

Where a Verdict is given as a Security Judgment should not be entered without Leave of the Court.

Jurisdiction.

Whitehead *against* Price.

Trin. 5 & 6 Geo. II.

Cooke.

Serjeant *Girdler* moved to stay Proceedings, the Plaintiff's Demand appearing to be no more than 18s. The Court made a Rule to shew Cause. Serjeant *Glyde* came to shew Cause, and said the Defendant should plead to the Jurisdiction. *Girdler* said

Motion to stay Proceedings, the Plaintiff's Demand being but 18s.

the Court of *King's Bench* had stayed Proceedings in the like Case. The Court said the Plaintiff might amend his Declaration, and increase his Damage, and that the Court of *King's Bench* had determined so. Adjourned, *Girdler* undertaking to produce the Rule in the Case he quoted in the *King's Bench*.

Downes *against* Nichols.

Mich. 12 Geo. II.

Thomson.

Action for
6 s. 6 d.

SErjeant *Birch* moved that Proceedings might be stayed, for that the Plaintiff's Demand amounted to no more than 6 s. 6 d. and produced an Affidavit of the Fact, but did not produce the Declaration. *Cur'*, We never try the *Quantum* of the Plaintiff's Demand upon Motion.

Irwin

Jury.

Irwin *against* Goldsmith.

Mich. 8 Geo. II.

Ingram, a Quaker, was returned up-
 on a Jury to serve at *Nisi* in *Guild-
 hall*; he appeared but refused to be
 sworn, upon which *Eyre* Chief Justice
 fined him 40s. *Chapple* and *Eyre*,
 Serjeants, moved that this Fine might
 be taken off, and insisted that by the
 Statute 7 & 8 W. 3. c. 34. s. 6. Qua-
 kers were disqualified from serving up-
 on Juries, therefore a Quaker ought not
 to be returned to serve.

Quaker fina-
 ble for refu-
 sing to be
 sworn on a
 Jury.

Chief Justice, was of Opinion that
Ingram was finable for not serving.

Denton of the same Opinion.

Fortescue contra, but desired Time
 to consider.

Reeve, The Statute of King *Willi-
 am* doth not totally disable a Quaker
 from serving upon a Jury, but only
 doth not enable him to serve upon a
 Jury taking an Affirmation instead of
 an Oath; and it is very well known
 that in criminal Cases Quakers have
 submitted to be sworn and examined
 upon Oath as Witnesses, therefore I

R 4

think

think the Lord Chief Justice hath done right in setting this Fine.

Parr against Seame.

Mich. 8 Geo. II.

Thomson.

Jury hustle in
a Hat for the
Verdict.

SErjeant *Chapple* moved for a new Trial upon an Affidavit that three of the Jurymen had declared, that the Jury had hustled in a Hat, and according as the Half-pence came out of the Hat, gave their Verdict. The Court stayed final Judgment till the next Term, and ordered the three Jurymen who made this Declaration to attend.

Eyles Bart. against Smart.

Mich 10 Geo. II.

Thomson.

The Charge
of striking a
Special Jury
to be paid by
the Party moving
for it,
the other
Charges to be
allowed.

THE Plaintiff moved for a Special Jury, and at the Trial had a Verdict, this Verdict was afterwards set aside on Payment of Costs; and the Question was whether the Defendant should pay the Plaintiff the Charge of the Special Jury. The Court held that the Charge of striking the Special Jury must be paid by the Plaintiff who moved

moved for it; but that all the other Expences of the Special Jury, as far as reasonable, must be allowed. *Comyns* and *Wright* for the Plaintiff; *Wynne* for the Defendant.

Money, &c. brought into Court.

Cas *against* Iveson an Executor.
Mich. 1 Geo. II.

THE Defendant moved for Leave to pay Money into Court; denied, he being an Executor. Defendant an Executor, not allowed to pay Money into Court.

Cas *against* Iveson Executor of Jaques.
Mich. 1 Geo. II.

THE Defendant being an Executor was allowed to bring Money into Court, consenting not to take the same out again. Allowed, consenting not to take it out again.

Gibbs Executor *against* Gawler.

Hil. 6 Geo. II.

Cooke.

Money can't
be brought
into Court in
the Case of an
Executor.

DEBT on Bond by an Executor, Serjeant *Belfield* moved for a *Superfedeas* in bringing the whole Money due on the Bond into Court, and that it might be refer'd to the Prothonotary to see what was due. The Court said it could not be done in the Case of an Executor; but a Rule was granted for the Plaintiff to shew Cause.

Lane *against* Wilkinson.

Mich. 1 Geo II.

Money paid
into Court,
the Plaintiff
refuses it,
proceeds to
Trial and is
non-suited; the
Defendant
cannot have it
back.

IN the Treasury-Chamber, the Judges were moved on Behalf of the Defendant, to have Money returned back that was paid by him into Court: The Case was this, the Defendant had brought Money into Court upon the common Rule, the Plaintiff would not accept of it, but proceeded to Trial, and upon the Trial was non-suited; and now the Defendant in regard the Plaintiff was out of Court by the Non-suit, prayed to have his Money back, producing the *Postea*, whereby it appeared the Plaintiff was non-suited. The Judges

Judges took Time to consider, and afterwards upon Sir George Cooke's producing a Note he had formerly taken of a Resolution in the like Case, the Judges were unanimously of Opinion, that the Defendant by bringing the Money into Court had admitted that the Plaintiff was intitled to it at all Events, and therefore the Defendant could in no Case have his Money back again. Afterwards the Plaintiff brought a new Action, and in *Hil. 1 Geo. 2.* the Court made a Rule for the Plaintiff to have the Money if he thought fit, but if not that it should remain in Court upon the common Rule in the new Action. *Vide postea, fo. 252.*

On new Action brought the Money to remain on the common Rule.

Rathbone *against* Stedman.

Trin. 2 Geo. II.

Borret.

THE Defendant paid 63 s. into Court on the common Rule, the Plaintiff proceeded, and upon the Trial the Defendant had a Verdict. The Defendant thereupon moved the Judges in the Treasury to have the 63 s. paid back towards Satisfaction of the Costs; on hearing the Agent for the Plaintiff, the Judges ordered the Money to be paid to the Defendant.

Money paid back out of Court to the Defendant towards Satisfaction of his Costs, he having a Verdict.

Dickins

Dickins *against* Tallowin.

Trin. 3 Geo. II.

Plaintiff non-sued at Trial after Money brought into Court, new Action brought, Leave to Defendant to pay in a further Sum, and both Sums to remain on the common Rule in the new Action.

THE Plaintiff brought his Action, and the Defendant brought into Court 98*l.* 1*s.* 3*d.* on the common Rule, the Plaintiff would not accept it, but went on to Trial and was non-sued; afterwards the Plaintiff brought a new Action, and upon Motion by Serjeant *Raby* the Court gave the Defendant Leave to bring into Court 6*s.* more than the Money brought in upon the first Action, and ordered that the 6*s.* together with the 98*l.* 1*s.* 3*d.* brought in upon the former Action, should remain in Court upon the common Rule in this Cause. *Vide antea fo.* 251.

Knapton *against* Drew.

Mich. 6 Geo. II.

Borret.

Money paid into Court shall not be paid back to the Defendant's Executors.

24 Nov. **S**erjeant *Skinner* moved to have 10*l.* out of Court, which had been paid in on the common Rule, the Defendant being dead; but the Court said that the Money being once paid in, belonged to the Plaintiff, and would make no Rule.

Frampton

Frampton *against* Cooke.
East. 6 Geo. II.

Cooke.

JUDgment was set aside on bringing Money paid
120 *l.* into Court to attend the Event into Court to
of the Verdict, the Plaintiff was Non-attend the E-
sued upon the Trial. *Chapple* and *Eyre* Verdict, paid
mov'd that the Money might be paid back back to the
to the Defendant. *Belfield* and *Skinner* the Plaintiff
for the Plaintiff, offer to pay Interest being Non-
for the Money if it might be kept in sued.
Court, the Defendant being poor.
Cur', The Cause is gone, the Plaintiff
being Nonsuited, and the Money
was paid into Court in that Cause
only, therefore it must be paid back to
the Defendant, the Plaintiff should
have stood a Verdict, which on Circum-
stances we might have set aside on Pay-
ment of Costs, and then the Money
might have been kept in Court; subject
to a new Verdict.

Savay

Savay *against* Franklin.

Hil 8 Geo II.

Plaintiff re-
fuses Money
brought into
Court and
proceeds, but
allowed to
take it out on
paying De-
fendant his
subsequent
Costs.

THE Defendant obtained the Common Rule for paying Money into Court, the Plaintiff would not accept it, whereupon the Defendant paid the Money into Court, and pleaded the General Issue: The Plaintiff went on, delivered the Issue, and gave Notice of Trial, but did not go on to Trial; and now Serjeant *Chapple* moved that the Plaintiff might have the Money out of Court; Serjeant *Eyre* for the Defendant insisted, that by the Words of the Rule the Plaintiff could not have the Money out of Court until after the Verdict: But the Court made a Rule for Payment of the Money out of Court to the Plaintiff, upon his paying to the Defendant Costs from the Time of paying the Money into Court.

Davis

Davis *against* Mansell, Bart.

Hil. 13 Geo. II.

THE Defendant paid Money into Plaintiff proceeding after Court on the common Rule, the Money paid Plaintiff refused to accept it, proceeded into Court allowed to take but afterwards moved that he might it out, on paying the Defendant his subsequent Costs. *Cur'*, Let the Defendant shew Cause, afterwards ordered accordingly; *Prime* for the Plaintiff; *Hayward* for the Defendant.

Crookhay *against* Martin.

Easter 9 Geo. II.

Cooke.

THE Defendant had paid 10 l. in Money paid to Court on the common Rule, into Court not the Plaintiff died before Trial; Serjeant *Belfield* for the Defendant moved that the Money might be paid back to the Defendant, tho' Plaintiff died before Trial. Serjeant *Chaple* insisted, that the Money belonged to the Plaintiff's Executor. *Cur'*, The Payment into Court is an Admission that the Money was due to the Plaintiff, and therefore ought not to be paid back to the Defendant.

James *against* Hosey.

Mich. 2 Geo. II.

Cooke.

Motion to pay
Money into
Court on all
the Counts in
the Declara-
tion except the
last, and to
demur to that,
denied.

Raby moved to pay Money into Court upon all the Counts in the Declaration except the last, and that to the last he might be at Liberty to demur. Upon Hearing *Whitaker* for the Plaintiff, the Court refused to let the Defendant separate the Counts in the Declaration, and said if he would bring Money into Court, he should bring it in upon the whole Declaration, and plead *Non Assumpsit*, for the Reason of making the Rule for Payment of Money into Court, was to prevent Vexation, and make an End of the Cause.

Colebatch *against* Machan.

Mich. 4 Geo. II.

Of paying
Money into
Court in Co-
venant.

Serjeant *Chapple* moved to bring 10 s. into Court in Covenant, and that the Plaintiff should not proceed in any Breaches in the Declaration, for Non-Payment of a Post-Fine ; the Action was brought upon a Covenant in an Indenture of Release, that an Estate was free from Incumbrances, and a Breach

Breach assigned that the Estate was incumbered with a Post-Fine; an Affidavit was read of the searching the King's Silver-Office, and there the Pre-Fine appeared to be 6s. 8d. and the Post-Fine 10s. The Court shewed great Reluctancy at making any Rule, because it did not appear in the Declaration what the Sum was the Estate was chargeable with, and because no such Thing had been ever done before, but said because it might possibly make an End between the Parties; and there was an Affidavit of Notice of the Motion, they would make a Rule to shew Cause.

Dixon *against* Allen.

Trin. 7 & 8 Geo. II.

Thomson.

DEbt for Rent, Serjeant *Hawkins* Leave to bring
 moved that the Defendant might Money into
 have Leave to bring 3*l.* into Court, Court in Debt
 and plead *Nil debet.* Cur', Be it so, for Rent.
 it is the common Practice.

S

Grove

Grove an Attorney *against* Ask.
Hil. 6 Geo. II.

Thomson.

Money not
to be brought
into Court
after regular
Judgment.

JUDgment was signed for Want of a Plea, the Defendant paid Money into Court on the common Rule after the Judgment was signed; Motion that the Judgment might be set aside on Payment of Costs, and that the Rule for bringing Money into Court might stand. *Cur'*, As the Judgment is regular, we will put no Difficulty upon the Plaintiff, let the Judgment be set aside on Payment of Costs, and pleading the General Issue. *Corbet* for the Plaintiff; *Hawkins* for the Defendant.

Cotton *against* Perks.
Trin. 8 & 9 Geo. II.

Thomson.

Costs of paying Money into Court and taking it out must be paid by Defendant tho' the Money was tendered and refused before paid in.

RULE to pay Money into Court, the Defendant rendered the Money to the Plaintiff's Attorney, who refused it; whereupon the Defendant paid it into Court, and pleaded the General Issue; then the Plaintiff accepted the Money; and now a Question arose about the Costs subsequent to the Tender and Refusal. The Defendant

defendant by the Refusal being put to the Charge of paying the Money into Court and Pleading. *Cur'*, The Costs of paying the Money into Court, and of taking it out again, must be paid by the Defendant, notwithstanding the Tender and Refusal, for though the Defendant tendered the Debt, he could not tender the Costs till they were taxed. *Chapple* for the Defendant; *Wright* for the Plaintiff.

Scarral against Horton.
Mich. 14 Geo. II.

Borret.

Serjeant *Agar* moved for an Attachment against the Defendant for not paying Costs taxed pursuant to a Rule for paying Money into Court, which Money the Plaintiff had accepted; the Rule was read. *Cur'*, We cannot grant an Attachment, because there is no positive Order for the Defendant to pay the Money, but if the Defendant does not pay the Costs upon Demand, the Plaintiff may proceed notwithstanding the Rule, without applying to the Court to have it discharged.

Where the Plaintiff accepts the Money on the common Rule he may proceed, unless the Defendant pays the Costs on Demand.

Bowles *against* Wheeler.

Hil. 9 Geo. II.

Thomson.

Leave to
plead double
and to bring
Money into
Court, denied.

Serjeant *Skinner* for the Defendant moved for Leave to plead double, viz. *Non Assumpsit*, & *Non Assumpsit infra Sex Annos*, and to bring 5 s. in to Court ; opposed by Serjeant *Urling*, and denied by the Court, as contradictory.

Cooke *against* Holgate.

Trin. 10 Geo. II.

Thomson.

Leave to bring
Goods into
Court denied,
they being
cumberfome.

Trover for Household Goods, Serjeant *Draper* moved for Leave to bring the Goods into Court ; the Goods appearing to be many and cumberfome, the Court denied the Motion, but made a Rule for the Plaintiff to shew Cause why he should not accept the Goods and Costs.

Stephenson

Stephenfon *against* Thomson.

Mich. 11 Geo. II.

THE Defendant had got a Rule for bringing Money into Court, which he served upon the Plaintiff's Attorney, and at the same Time gave him a Plea, and asked the Plaintiff's Attorney if he would accept the Money, to which he answered, *I know my Client will not.* The Defendant did not pay the Money into Court until after a Copy of the Issue was delivered to him; upon the Trial the Plaintiff did not recover so much as the Money brought into Court. The Plaintiff moved to discharge the Rule for paying the Money into Court, because the Money was not brought into Court before the Plea pleaded. The Court set aside the Rule, and said the Money should have been brought into Court before the Plea was delivered.

Money to be brought into Court should be brought in before Plea delivered.

Usher and Others *against* Edmunds,
Mich. 13 Geo. II.

Borret.

Leave to with-
draw the Ge-
neral Issue,
plead the same
de novo, and
pay Money in-
to Court.

SERJEANT *Skinner* moved that the De-
fendant might be at Liberty to with-
draw his Plea of the General Issue, to
plead the same *de novo*, and pay Mo-
ney into Court; the Case was this,
the Defendant had directed his Attor-
ney to pay Money into Court on the
common Rule; the Attorney died be-
fore it could be done, and his Clerk
delivered the General Issue by Mistake.
Rule to shew Cause. *Agar* for the
Plaintiff. *Cur'*, The general Practice
is against the Defendant, but must be
dispensed with in Case of Accidents.
Let the Rule be absolute.

Burgess *against* Pallamounter.
Mich. 12 Geo. II.

Cooke.

Money not to
be paid into
Court after
regular Judg-
ment.

SERJEANT *Belfield* moved that the
Judgment in this Cause might be set
aside on Payment of Costs, pleading the
General Issue, &c. and that the Defen-
dant might be at Liberty to pay Mo-
ney into Court on the common Rule.
Cur', The Defendant is not to be ad-
mitted to pay Money into Court after
a regular Judgment signed.

Swan

Swan *against* Freeman.

Hil. 13 Geo. II.

Thomson.

ON the 28th of Nov. last Term, the Defendant paid 2*l.* 12*s.* 0*d.* into Court upon the common Rule and pleaded the General Issue. The Plaintiff refused to accept the Sum, and join'd Issue. This Term Serjeant *Agar* moved to amend the Rule by striking out 2*l.* 12*s.* 0*d.* and making the Sum 7*l.* 12*s.* 0*d.* Rule to shew Cause. *Boote*, for the Plaintiff, said it was paying Money into Court, after a Plea pleaded; *quod Cur' concessit*, and therefore discharged the Rule, saying it might introduce Tricks to try whether a Plaintiff will accept less than is due.

Motions.

Anonymus.

Mich. 6 Geo. II.

Nov. 10. SERJEANT ——— comes this Day to shew Cause against a Rule which was made on Serjeant *Girdler's* Motion to shew Cause as Yesterday.

On a Rule to shew Cause, Cause shou'd be shewn on the very Day, or Notice given.

S 4

Per

Per Cur', We cannot hear you, unless you have given Notice that you would shew Cause this Day, or until the other Side come to make their Rule absolute. You are too late and should have shewn Cause on the Day appointed.

Wye *against* Wright.

Mich. 6 Geo. II.

On Service of 10 Nov. **A** Ffidavit of Service of a Rule, the Original must be shewed then, and not afterwards. was left with a Servant at the Party's Lodgings on whom it was to have been serv'd, that some Days afterwards the Party acknowledged that he had received the Copy, and then the Person who serv'd it shewed him the Rule.

Per Cur', This is not good Service, because the Rule was not shewn to the Servant when the Copy was delivered; and though the Party acknowledged the Receipt of the Copy, yet when the original Rule was shewn to him, there was no Copy to examine it by.

Ano-

Anonymus.

Trin. 10 & 11 Geo. II.

Serjeant *Bootle* moved for Leave to Motion on justify Bail, after two Serjeants had Paper Days. moved for their Arguments, but the Court would not receive this Motion till the Paper was gone through.

Mutual Debts.

Geale *against* Chapman.

Trin. 5 Geo. II.

Foley.

UPON the Trial of this Cause, the Defendant gave in Evidence a Debt due for Rent from the Plaintiff, upon setting off which there appeared to be due to the Defendant 13 s. and all this was specially set out upon the *Postea*, and the Question was, whether the Defendant should have Costs. *Baynes* for the Plaintiff; *Darnal* for the Defendant. *Cur'*, Unanimous that the Defendant should have Costs.

If on setting off a Debt at Trial, a Balance be found for the Defendant, he shall have Costs.

Stevens

Stevens *against* Loftin.

Mich. 7 Geo. II.

Simple Contract Debt
can't be set
off against a
special Debt.

ERROR in *B. R.* Debt on a Bond, Penalty 76*l.* 10*s.* Condition for Payment of 38*l.* 5*s.* the Defendant pleaded that the Plaintiff was indebted to him in 70*l.* and prayed to set off 38*l.* 5*s.* Denied.

1 Objection to the Plea. A Simple Contract Debt can't be set off against a Specialty Debt.

2 Objection. The Penalty is the Debt in Law, and the Sum offered by the Plea to be set off is less than the Penalty.

For the Defendant. The Words of the Act for Setting one Debt against another are, *Mutual Debts*, and the same in the Bankrupt Act, 5 *Geo.* 2. by which different Kinds of Debts are set off, and there would be a manifest Inconvenience, if not so in this Case. Payment of a Debt is pleadable by the Act for Amendment of the Law, and this Tender is a Payment within the Statute.

For the Plaintiff. In an Action on a Bond the whole Penalty must be recovered, and that is the Debt in Law, the Sum offered is less than the Debt.

Hardwick

267

Brown *against* Hollyoake.

Hil. 7 Geo. II.

DEBT for Rent upon an Indenture of Lease, the Defendant pleads that the Plaintiff was indebted to him by Note, the Plaintiff demurs. *Cur'* a Debt of a Superior Nature cannot be pleaded to a Debt of an inferior Nature. A Debt of an inferior Nature cannot be pleaded to a Debt of a superior Nature, and so it has been determined in this Court. *Trin. 5 & 6 Geo. 2. Kemys v. Betson. Cortisos & Minos, Mun & Osbaldiston, Mich. 7 Geo. 2. Loftin v. Stevens.* Judgment for the Plaintiff.

Shipman

Shipman *against* Thomson.

Mich. 11 Geo. II.

Case by Exe-
cutor for Rent
received by
Defendant
which was due
to Testator in
his Life-Time,
the Defendant
cannot set off
a Debt due
from Testator.

THE Plaintiff was surviving Exe-
cutrix, and proved the Will, the
Defendant after the Death of the Te-
stator received Rents that were due to
the Testator in his Life-Time.

The Plaintiff sued in her own Name,
and not as Executrix, for Money had
and received to her Use.

The Defendant set off a Debt due to
him from the Testator.

1. *Q.* Whether the Plaintiff should
not have named herself Executrix?

Ref. It is right in her own Name,
where the Cause of Action arose after
the Death of the Testator, the Execu-
tor must sue in his own Name. If the
Plaintiff had named herself Executrix,
she should not have been excused from
Costs. 1 *Salk.* 27, 207. *Jenkins &*
Ux. v. Plume, 6 *Mod.* 93. *Carth.* 335.
Curry v. Stevens.

2. *Q.* If the Defendant can set off?

Ref. He cannot, for if the Statute
was to be extended to this Case, it
would let in Fraud, and enable Exe-
cutors to pay the Assets of Testators in
Discharge of Simple Contract Debts, to
the Prejudice of Creditors, by Specialty.

Notice

Notice.

Buckfom, Lessee of Pellow, *against*
Pellow. Mich. 5 Geo. II.
Cooke.

DEtermin'd *per Curiam*, that where a Term's Notice is necessary, to be given, the Notice must be given before the Effoin-Day of the Term.

Where a Term's Notice is necessary it must be given before the Effoin-Day of the Term.

Order.

Moon *against* Moon and Others.
Mich. 6 Geo. II.

Cooke.

SErjeant *Chapple* moved, 1. That an Order made by Judge *Price* might be made a Rule of Court ; and 2. That Service of the Rule at the Party's House might be deemed good Service, and produced a full Affidavit of Endeavours used to serve the Party, without Effect. *Cur'*, This is a double Motion and can't be granted. Let the Party shew Cause why the Order should not be made a Rule of Court, which Rule was afterwards

Of making a Judge's Order a Rule of Court, and the Service of it.

wards made absolute, and then the Serjeant moved upon the same Affidavit that Service of the Rule at the Party's House might be deemed good Service. *Cur'*, The Affidavit appears to have been sworn before the Rule was made, and no Endeavours appear to have been used to serve the Rule: Motion denied.

Outlawry.

Manghen *against* Graham.

Hil. 3 Annæ.

Defendant taken on *Capias* Utlegatum, shall on the Defendant taken thereon at the Reversal pay Cost to the Exigent only, the rest to attend the Event.

If Outlawry transmitted into the Exchequer, or Levy made, full Costs.

Outlawry reversed after several *Capias's Utlegatum* sued out, and the Defendant taken thereon at the Plaintiff's great Charge. Ruled by all the Judges in the Treasury (upon Mr. Prothonotary Cooke's Certificate) that the Defendant shall only pay the Costs to the Exigent, and that the subsequent Costs shall attend the End of the Cause, but admitted that if the Outlawry had been sent into the *Exchequer*, and any Levy made, or Lease granted, that then the Defendant should pay the Plaintiff all his Costs.

Yer *against* Cawsey.

Trin. 2 Geo. I.

AN Outlawry being reversed, the Plaintiff can't be non-professed after Outlawry reversed. Defendant signed a *Non Pros* for Want of a Declaration, the Plaintiff moved to set the *Non Pros* aside, insisting that he could not lose that Writ, which by Reversal was become void, and for this Reason the *Non Pros* was set aside; and it was said that where the Plaintiff does not declare within two Terms after Outlawry reversed, the Defendant may give a Rule to this Effect, *viz.* that unless the Plaintiff declare in the Cause within four Days after Notice of the Rule to him or his Attorney given, he shall pay to the Defendant or his Attorney Costs, to be taxed by the Prothonotary. *See the Rule, Trin. 33 Car. 2.*

Carvil *against* Manby an Attorney.

Mich. 5 Geo.

A Bill was filed against the Defendant, and Judgment had thereon, the Plaintiff then proceeded to outlaw the Defendant, and took him on a *Capias Utlegatum*. Agreed that the Defendant ought not to have been outlawed, *Outlawry after Judgment lies not on a Proceeding by Bill.*

ed, because the Judgment is by Bill and not by Original Writ. Therefore let the Defendant be discharged out of Custody.

Pindar *against* Saunderfon.

Mich. 2 Geo. II.

Landlord shall not be paid a Year's Rent out of Goods taken on a *Capias Utlegatum*.

MOTION by a Landlord that out of Goods taken upon a *Capias Utlegatum*, the Sheriff might pay him a Year's Rent, pursuant to the Statute 8 *Annæ, c.*

The Doubt was whether a *Capias Utlegatum* was within the Statute, the Court upon hearing *Webb* and *Girdler* for the Landlord, and *Corbet* for the Plaintiff held the *Capias Utlegatum* was within the Exception of the Statute, and had been so adjudged in *B. R. Eden v. Crain, Trin. 1712.*

Pots *against* Voyce.

Hil. 3 Geo. II.

A visible Person outlawed, he being a desperate Person, and riding armed.

MOTION that the Plaintiff might reverse an Outlawry at his own Expence, the Defendant living in *Ely* to the Plaintiff's Knowledge, and was visible there, and yet outlawed in *London*. *Raby* for the Defendant. Rule to shew Cause. *Urlin* for the Plaintiff, shewed

shewed for Cause, that the Defendant was a desperate Man, and rode about armed with Pistols, and told the Plaintiff that he absconded. *Price* and *Fortescue* Justices, said he was well outlawed; Chief Justice *contra*. *Denton* absent.

Paterfon against Greave.

Mich. 6 Geo. II.

11 Nov. **M**OTION to set aside an Defendant Outlawry, on Pretence who absconded, outlawed in the first Instance. that the Defendant appeared publickly and never absconded, and that the Plaintiff had sued him to an Outlawly in the first Instance, without endeavouring to get him arrested on the ordinary Process; it appeared to the Court that the Defendant had absconded Years together, and therefore it was held that there was no Need to take out the other Process, for that it would be in vain.

Denton J. In the *King's Bench* they never inquire farther, than whether the Defendant absconded or not, and never ask if he was outlawed in the first Instance.

Cur', The Outlawry is regular, and not like the Case which happened the other Day, where it appeared that the

T

Defendant

Defendant, who was outlawed in the first Instance, was a visible Person.

Fort *against* Eyre.

Hil. 8 Geo. II.

Cooke.

A Person visible outlawed, he being within a privileg'd Place.

MOTION to set aside an Outlawry, because the Defendant was a visible Person, the Plaintiff swore that the Defendant lived within the Verge of the Court, and that he could not obtain Leave to arrest the Defendant, notwithstanding he had applied to the Board of Greencloth for that Purpose.

Peach *against* Wadland.

Mich. 11 Geo. II.

No Appearance necessary to the Exigent on suing out a Superfedeas

IT was questioned whether an Appearance be necessary to be enter'd to the Exigent before a *Superfedeas* be made out. *Cur'*, It is not necessary, the *Superfedeas* is an Appearance of itself. *Dyer* 222, 3.

Hutchinson

Hutchinson against Wyat.

Hil. 11 Geo. II.

Thomson.

Serjeant *Boote* moved that the Outlawry might be reversed, and set aside, because the Proclamation was not filed with the *Custos Brevium*. Rule to shew Cause. *Eyre* for the Plaintiff. *Cur'*, It is not necessary that the Proclamation be actually filed with the *Custos Brevium*; if it be returned by the Sheriff it is sufficient. Proclamation need not be filed.

Oyer.

Higgins, Executor of Higgins,
against Stewart, Administrator
of Cherrington. Hil 4 Geo II.

Cooke.

DEBT on a Bond, Judgment signed for Want of a Plea, on Motion to set aside the Judgment; it appeared that the Defendant's Agent in Town had demanded Oyer of the Bond, and the Plaintiff's Attorney had given Oyer to the Defendant himself, who was an Attorney, but was not sued as an Attorney. *Cur'*, Oyer ought to have been Oyer delivered to a Defendant when demanded by his Agent, bad.

Notice of
Trial or In-
quiry to be
given to At-
torney, if
known.

given to the Agent, therefore let the Judgment be set aside. The Court also declared that all Notices of Trial, or of executing Writs of Inquiry, ought to be given to the Attorney or Agent, if known ; but if the Attorney or Agent be not known, these Notices may be given to the Defendant himself.

N. The Way to find out where an Attorney lives, as expected by the Court, is to inquire at the Office of the *Filazer* of the County, or at the Seal-Office, or of the Prothonotary.

Champion *against* Budd.
Hil. 5 Geo. II.

Cooke.

Debt on Bond
for Perform-
ance of Arti-
cles, Plaintiff
not obliged to
give Oyer of
the Articles.

THIS was an Action of Debt, upon a Bond given for the Performance of Articles, Judgment was signed for Want of a Plea ; the Defendant moved that the Judgment might be set aside, because he had demanded *Oyer* of the Bond and Articles, and the Plaintiff had only given *Oyer* of the Bond. *Cur'*, The Plaintiff is not obliged to give *Oyer* of the Articles, he is only obliged to give *Oyer* of the Deed he declares upon ; as in the Case of *Fevon v. Salk*.

Grant,

Grant, Bart. *against* Ewer.
Mich. 6 Geo. II.

Cooke.

H *Azekyns* and *Wynne* Serjeants, moved that the Plaintiff might give ^{Oyer of an Indenture mentioned in} *Oyer* of an Indenture mentioned in the ^a Bond. Condition of a Bond, for Payment of 14000*l.* Rule to shew Cause, afterwards made absolute.

N. The Plaintiff is not bound to give *Oyer* of any Thing but the Deed he declares upon, unless by Special Rule of Court.

Hampton *against* Partridge.
Trin. 5 & 6 Geo. II.

Cooke.

Serjeant *Chapple* moved for Leave ^{Oyer of a Copy of a Deed.} to sign Judgment, notwithstanding the Defendant had prayed *Oyer*; it appearing by Affidavit that the original Deed was in the Defendant's Custody. *Cur'*, Let the Defendant shew Cause why *Oyer* of a Copy should not be as effectual as *Oyer* of the Deed itself. *Darnal* shewed Cause, and produced an Affidavit that the Defendant had not the Deed, tho' he had had it formerly. Rule made absolute. *Q.*

T 3

Hartley

Hartley *against* Varley.

Hil. 7 Geo. II.

Cooke.

Too late to
demand
Oyer after
Rule to plead
is out.

DE B T on a Bond, Motion for
Oyer; it appeared by Affidavit
that the Defendant lived in *York*, and
that before the Defendant's Attorney
could get Instructions from his Client,
the Rule to plead was out, and a Plea
had been demanded; the Defendant's
Attorney demanded Oyer, which the
Plaintiff's Attorney refused to give him.
The Court refused to make any Rule.

Hargrave *against* Cooke.

Trin. 13 & 14 Geo. II.

Cooke.

Oyer, after
Rule to plead
out, denied.

DE B T on a Bail-Bond laid in
Northumberland; after the Rule
for pleading was out, the Defendant
craved Oyer, the Plaintiff denied it, Mo-
tion for Oyer. *Cur'*, We can't grant it,
we must abide by our Rule. *Prime*
for the Defendant, *Draper* for the
Plaintiff.

Draper

Pauper.

Anonymus.

Easter 8 Geo. II.

THE Defendant was admitted to A Defendant defend *in Forma Pauperis*, a cannot be Verdict was given for the Plaintiff; it admitted in was insisted that the Prothonotary should forma pauperis. not allow Costs, because the Defendant was a *Pauper*: A Motion was made in the Treasury for Directions to the Prothonotary to allow the Plaintiff his Costs; and it was insisted that a Defendant could not be admitted to defend *in Forma Pauperis*; upon reading the Statute 11 H. 7. c. 12. the Judges were unanimously of Opinion, that the Statute did not extend to Defendants, that the Defendant could not defend *in Forma Pauperis*, and that therefore Costs allowed the Prothonotary should allow the against a Defendant who Plaintiff his Costs. Mr. Clarke, Secondary of the *King's Bench*, had been admitted to defend in *Forma Pauperis*. he said he never knew a Defendant admitted *in Forma Pauperis*. Secondary Barnes said, that when he lived

with Judge *Tracy*, the Judge had been often applyed to, to admit Defendants to defend *in Forma Pauperis*, but had always refused to admit them.

Plea.

Knight *against* Lazenby.

Dogget *against* Hawes.

Mich. 1 Geo. II.

Demand of
Plea or Oyer
to be in Wri-
ting.

THE Court held that all Demands of *Oyers* and *Pleas* must be in Writing.

Reed *against* Brown, Widow and
Administratrix. Easter 5 Geo. II.
Borret.

If no Agent
in Town, a
Plea, &c.
must be de-
manded of the
Attorney in
the Country.

Serjeant *Eyre* moved that the Judgment in this Cause might be set aside for Irregularity in not demanding a Rejoinder. *Darnal* for the Plaintiff, The Case was this: The Defendant's Attorney who lived 30 Miles off in *Essex*, left a Plea in the Office in his own Name without writing who was his Agent. The Plaintiff's Attorney who lived likewise in the Country, wrote the Defendant's Attorney Word, that a Replication was left in the Office, but

but did not demand a Rejoinder. The Plaintiff's Agent in Town did not know who was the Agent, the Defendant's Attorney at present employed, but knowing an Agent he had employed in another Cause, he demanded a Rejoinder of him. Sir *George Cooke* and Mr. *Borret* being asked what was the Practice of the Court in such Cases, said, if the Country Attorney had no Agent in Town, the Plaintiff's Attorney or Agent must (though it was very hard) make a Demand of a Plea, &c. of the Country Attorney himself; whereupon the Court declared this Judgment to be irregular.

Taylor *against* Lawfon.

Mich. 9 Geo. II.

Borret.

MOTION to set aside a Judgment. Plea tho' with Notice to set off, must be delivered in Town.
 A Plea had been delivered in the Country, with a Notice of Setting off a Debt at the Trial; both the Attornies lived in the same Town. *Chapple* said that in such a Case as this, 'twas reasonable to allow Pleas to be delivered in the Country, because the Notice of the Set off must be proved at the Trial. *Eyre* said if this Distinction was to prevail, it would destroy the settled Practice of the Court, because then all Pleas would be

be delivered with Notice of Setting off, whether insisted on at the Trial or not; besides the Inconvenience complained of might be remedied by a Counsellor's Clerk seeing the Plea with Notice delivered. *Cur'*, (*Chief Justice* and *Denton* absent) Let the Judgment be set aside, and the Costs attend the Event of the Cause.

Anonymus.

Mich. 1 Geo. II.

If a Plea, which ought to have Counsel's Hand or an Affidavit annexed, be delivered without, the Plaintiff may sign Judgment.

THE Judges in the Treasury declared, that if a Plea which ought to have a Counsel's Hand be delivered without, or if any Plea which ought to have an Affidavit annexed be delivered without, the Plaintiff may *instanter* sign Judgment, as if no Plea had been delivered, without any Application to the Court for Leave.

Upton against Pulleine.

Mich. 1 Geo. II.

Foley.

Pleas not requiring a Serjeant's Hand.

BAines moved to set aside a Judgment signed by the Plaintiff, for Want of a Serjeant's Hand to the Defendant's Plea; the Plea was *per minas*. *Raby* opposed this, and all the Serjeants seemed alarmed. *Sir George Cooke*, Prothonotary,

thonotary, reported that it was not necessary to have a Serjeant's Hand to these Pleas, viz.

<i>Comperuit ad diem,</i>	<i>Per Minas,</i>
<i>Son Assault,</i>	<i>Solxit ad diem,</i>
<i>Plene administravit,</i>	<i>Ne unques Exec',</i>
<i>Riens per discent.</i>	<i>Infra Etatem.</i>
<i>Nul tiel Record,</i>	

Foley and Borret, Prothonotaries, declared themselves of the same Opinion, and informed the Court, that those Pleas were not taken to be special Pleas, and that they were paid for them as common Pleas, which the Court accorded in, and set aside the Judgment.

Mich. 8 Annæ.

R*Egula Generalis*, on a special *Capias*, returnable on *Mens. Mich.* or *Tres pasc.* the Defendant shall plead *indilate*. When the Defendant shall plead *indilate* on a special *Capias*.

Basset against Ebden.

Trin. 10 Annæ.

R**U****L****E** given 18 May *infra* 8 Days, Days to plead Judgment sign'd the 26th, agreed inclusive. *per totam Curiam* that the Day on which

which the Rule was given should be accounted as one, and therefore the Judgment was well signed.

Brome *against* Woodward.

Mich. 3 Geo. II.

Cooke.

Judgment
can't be sign'd
till the After-
noon of the
Day after the
Rule to plead
is out.

MOTION to set aside a Judgment for Irregularity; the Irregularity complained of was, that the Judgment was signed the Morning after the Rule to plead was out.

Whereas the Plaintiff was not intitled to sign his Judgment, until the Afternoon of the Day after the Rule to plead was out. Judgment set aside. *Cheshyre* for the Plaintiff; *Darnal* for the Defendant.

Pleydel *against* Carter.

East. 5 Geo. II.

Borret.

Judgment
signed too
soon after the
Demand of a
Replication.

Wednesday **U**PON a Rule for the Defendant to shew Cause why a *Non Pros* irregularly obtained should not be set aside with Costs. The Case was as follows.

The Defendant being arrested on a *Capias* returnable *Octab. Hilar.* removed himself by *Habeas Corpus* to the *King's Bench* Prison; the Plaintiff's Attorney delivered to him there a Declaration in this Court, but discovering his

his Mistake brought a *Habeas Corpus*, upon which the Defendant was brought into this Court, and a Declaration *de novo* (*verbatim* the same as the former) was delivered to him by Mr. Secondary *Thomson*, who gave him Notice to plead in Time, or that Judgment would be signed against him; and then the Defendant was committed to the *Fleet*: The Defendant removed himself again by *Habeas Corpus* to the *King's Bench* Prison, and then pleaded the former Declaration as a *Lis pendens* for the same Matter, and gave a Rule for the Plaintiff to reply. On the 2d of *May* the Rule to reply was out. On the 3d of *May* in the Evening, *Thomas Jenkins*, the Defendant's Attorney demanded a Replication, and the next Day, 4th of *May*, at Nine in the Morning, signed a *Non-pros*, sued out a *Supersedeas* to the Marshal of the *King's Bench*, and before 10 o'Clock the Defendant was discharged out of Custody: The same Day about Noon Mr. *Serle* the Plaintiff's Attorney tendered a Replication, but the Defendant's Attorney told him he had signed a *Non-pros*, and therefore would not accept the Replication.

Cur', Let the *Non-pros* be set aside with Costs, and let Mr. *Jenkins* the Defendant's Attorney shew Cause on
Friday

Friday next, why an Attachment should not go against him.

Mr. *Jenkins* immediately put in Bail for the Defendant, and surrendered him, and on *Friday* the 19th of *May* shewed for Cause, that the Defendant was in the Custody of the Warden of the *Fleet*. Whereupon the Court discharged the Rule for an Attachment without Costs.

Biddleston *against* Acherley.

Easter, 4 Geo. II.

Cooke.

Defendant
must plead in
Abatement
within 4 Days
after Declaration
delivered,
or Notice.

A Greed by all the Judges in the Treasury that if the Defendant pleads in Abatement, he must plead within four Days after the Declaration delivered, or Notice of the Declaration left in the Office, and so it was settled by the Court, *Pasc.* 8 Geo. I. in the Case of *Birch* and *Fryer*, *antea*, fo. 3. produced by Sir *George Cooke* and *Foley*, Prothonotaries. In the principal Case the Declaration was delivered on the Eighth of *February*, and the Plea in Abatement on the Fourteenth of *February*; the Plaintiff signed Judgment, which was held to be regular.

Herne, One, &c. against Chapman.
Mich. 5 Geo. II.

Borret.

Serjeant *Eyre* moved to set aside a Judgment; the Defendant had procured a Judge's Order for Time to plead till *Monday*, and on *Tuesday* Morning the Plaintiff sign'd his Judgment for Want of a Plea; and the Question was, whether he should not have stayed till the Afternoon. Upon hearing *Chapple* for the Plaintiff, the Court said that the Defendant had all *Monday* to plead in, and the Judge's Order for Time to plead, only enlarged the Time of the Rule to plead, and the Plaintiff could not sign his Judgment in any other Manner than he should have done in Case it had been a Rule to plead, and therefore the Plaintiff should not have sign'd his Judgment until *Tuesday* in the Afternoon.

On a Judge's Order for Time to plead till Monday, Judgment can't be sign'd till Tuesday in the Afternoon.

Godfrey against Mathews.

Hil. 6 Geo. II.

Cooke.

Declaration delivered to the Defendant's Attorney; the Defendant lived above 20 Miles from *London*. The Question was, whether the Defendant should have 8 Days Time to plead.

Defendant living above 20 Miles from London, has 8 Days to plead.

plead

plead after the Declaration delivered, or only 4 Days. On reading the Rules of *Mich. & Pasc. tertio Geo. 2.* the Court said the Defendant should have 8 Days, and set aside the Judgment signed on the fifth Day after the Rule to plead was given. *N.* The Declaration and Rule were given on the same Day. *Hawkins* for the Plaintiff; *Umlin* for the Defendant.

Mathew and his Wife, Administrators, *against* Stone. Trin. 6 & 7 Geo. II.

Borret.

After Impar-
lance only 4
Days to plead
in a County
Cause.

DDeclaration filed in *Hilary* Term, but Notice of it was not given till *Easter* Term. An Appearance was enter'd on the Effoin-Day of *Easter*-Term. A Rule to plead was given on the first Day of *Trinity*-Term, and Judgment was signed for Want of a Plea on the fifth Day in Term. *Chap-ple* alledged, as the Declaration was entered of *Hilary*-Term, and the Appearance not entered till the Effoin-Day of *Easter*-Term, the Proceedings were irregular; but the Court said they were regular: It was then insisted, that this being a Country Cause, the Defendant ought

ought to have had 8 Days Time to plead in *Trinity-Term*, but the Court said that after *Imparance* four Days were enough ; on *Process* returnable the first or second Return of the same Term, there ought to have been 8 Days. Then the Defendant moved that the Judgment might be set aside on Payment of Costs, pleading the General Issue, &c. but that the Defendant might be at Liberty to bring 10 s. into Court on the common Rule. The Court said after a regular Judgment they would not allow the Defendant to bring Money into Court. *Belfield* for the Plaintiff.

Lazenby against Bradley.

Mich. 7 Geo. II.

Cooke.

THE Defendant lived above 40 Miles from *London*, and was served with a Copy of *Process* returnable the first Return of the Term, and appeared by Attorney ; and now the Question was whether he should have 4 Days or 8 Days Time to plead. *Chapple* for the Plaintiff ; *Wynne* for the Defendant. The Court held that the Defendant should have 8 Days Time to plead.

U

Went-

Wentworth, Bart. *against* Huftler,
Widow. Trin. 13 Geo. II.

Borret.

Peremptory
Rule to plead
in an Action
of Wast.

ACTION of Wast, Serjeant *Dra-*
per moved that the Judgment in
this Cause might be set aside, being
signed contrary to an Agreement: He
also insisted upon an Irregularity, for
that the Plaintiff had not given a peremp-
tory Rule to plead, which he ought to
have done. Rule to shew Cause.
Skynner for the Plaintiff insisted that
this being a mix'd Action, a peremptory
Rule to plead was not necessary. The
Court gave no Opinion, the Parties a-
greeing to try the Cause at the next As-
sises; but all the Prothonotaries thought
a peremptory Rule was necessary.

Taylor *against* Stockham.

Mich. 7 Geo. II.

Cooke.

When Time
given to plead
Plaintiff need
not give a
new Rule.

Settled that if a Judge gives Time
to plead till the first Day of the
subsequent Term, when the Time is ex-
pired, the Plaintiff in Default of a
Plea may sign Judgment without gi-
ving a new Rule to plead. *Chapple*
for the Plaintiff; *Eyre* for the Defen-
dant.

Dawson

Dawson *against* Garth.

Easter 10 Geo. II.

Borret.

THE Defendant obtained a Judge's Order, that Proceedings upon the Bail-Bond should be stayed upon Payment of Costs, receiving a Declaration in the original Action, and pleading the General Issue. The Plaintiff signed Judgment for Want of a Plea, without giving any Rule to plead. Serjeant *Agar* moved that the Judgment might be set aside. Rule to shew Cause. *Skynner* for the Plaintiff. The Question was, whether as the Defendant was by the Judge's Order bound to plead, it was necessary to give a Rule. *Cur* (Chief Justice absent) there was no Occasion to give a Rule, the Judge's Order has dispensed with it.

Belshaw against Porter.

Mich. 7 Geo. II.

Borret.

THE Defendant took out a Summons for Time to plead, then moved that the *Venue* might be changed, and obtained a Rule *Nisi*, which Rule on shewing Cause was discharged, the Affidavit being insufficient; the

Judgment signed, tho' Summons for Time to plead was not discharged.

Plaintiff as soon as the Office was open in the Afternoon of the same Day, sign'd Judgment for Want of a Plea, though the Summons for Time to plead had not been discharged, and for that Reason the Defendant moved that the Judgment might be set aside. *Cur'*, The Defendant by moving that the *Venue* might be changed, relinquish'd the Summons: The Judgment was regularly signed.

Whitehead *against* Shaw.

Mich 10 Geo. II.

Borret.

Summons for
Time to plead
after Rule out,
no Stay of
Proceedings.

AFTER the Rule to plead was out, the Defendant took out a Judge's Summons for Time to plead, and served the Plaintiff with it; but the Plaintiff notwithstanding signed Judgment. *Cur'*, The taking out this Summons after the Time to plead was out, was an Imposition in the Judge, no Proceedings were thereby stayed; the Judgment is regular. *Wright* for the Plaintiff; *Boote* for the Defendant.

Ottiwell *against* Death.

Trin. 10 & 11 Geo. II.

Thomson.

Summons for
Time to plead
after Rule is
out no Stay of
Proceedings.

MOTION to set aside a Judgment which was signed pending the Lord Chief Justice's Summons for Time,

Time to plead ; it was insisted for the Plaintiff, that the Summons was taken out after the Rule to plead was out, and therefore could not stay the Plaintiff from signing his Judgment. The Court held that regularly a Summons for Time to plead could not be taken out, after the Rule to plead was out ; and that if such Summons was taken out and serv'd, it should not stay the Plaintiff's Proceedings, and therefore held this Judgment to be regularly sign'd. *Belfield* for the Plaintiff ; *Price* for the Defendant.

Hickman *against* Waller.

Mich. 7 Geo II.

Thomson.

MOTION by Serjeant *Urlin* to set aside a Judgment with Costs, the Plaintiff's Attorney's young Clerk had agreed that the Defendant's Attorney should have the next Day to plead, the Master (who knew nothing of the Agreement) sign'd Judgment in the Afternoon of the next Day. Rule to shew Cause. *Eyre* for the Plaintiff. *Cur'*, This is the Master's Agreement, although only made by the Clerk ; for it is to be presumed that he had his Master's Order ; therefore as the Judgment

Attorney's Clerk gives time to plead, the Master bound by it.

ment is sign'd contrary to the Agreement, Let the Rule be absolute, with Costs.

Craven *against* Aislabye.

The Same *against* Anderton.

Mich. 9 Geo. II.

Thomson.

Plaintiff may
wave an irre-
gular Judg-
ment, and
give a new
Rule to plead.

Serjeant *Skynner* moved that the Judgments obtained in these Causes might be set aside for Irregularity. The Case was this, the Plaintiff entered Appearances for the Defendants, and gave Rules to plead before he had given Notices of the Declarations in the Country; the Defendant's Attorney being aware of this Irregularity, would not plead, and Judgments were signed for not pleading; the Plaintiff's Attorney now seeing his Mistake, struck out the Rules to plead in the Secondary's Book, gave new Rules, and signed Judgments *de novo*. Rule to shew Cause. *Eyre* for the Plaintiff. The Question was, whether the Plaintiff could waive the former Judgments without Leave, and give new Rules to plead. *Cur'*, It is only one Entry on the Remembrance and Judgment Roll, which are never made up till after Term; the former Judgment

Judgment appears by the Prothonotary's Book to have been signed by Mistake, and therefore the second Judgment is regular.

Elliot *against* Gambier.

Mich. 6 Geo. II.

7 Nov. **O**N a Rule for the Plaintiff ^{Defendant} to shew Cause why ^{may plead} Judgment and the Writ of *Capias ad Satis-* ^{any Time be-} *faciendum* should not be set aside, and ^{fore Judgment} ^{signed.} the Defendant have Restitution of 320 l. in the Sheriffs Hand.

Serj. Eyre for the Plaintiff. This is an Action against the Defendant as Warden of the *Fleet*, for the Escape of *Thomas Boswell* in Execution at the Plaintiff's Suit: The Declaration was of *Easter Term*; the Defendant in the Vacation obtained Mr. Justice *Price's* Order for Time to plead, *viz.* Two Days in *Trinity Term*; those two Days were the 9th and 10th of *June*; the Defendant did not plead till *Sunday* the 11th of *June*, and then delivered a vitious Plea, wherein, besides several material Faults, they had put *John* for *Richard* (the Plaintiff's Christian Name in several Places) and Mr. G. the Plaintiff's Attorney looking upon this Plea as a mere Nullity, sign'd Judgment.

Serj. Chapple for the Defendant.
 The Declaration was delivered on the last Day in *Easter* Term, therefore the Defendant had four Days in *Trinity* Term to plead in, viz. to *Tuesday* the 13th of *June* inclusive; however, supposing the Defendant bound by the Judge's Order, which he had imprudently obtained, although the Plea was not delivered within the two first Days of *Trinity* Term, yet it was delivered between the second and third Days, viz. on *Sunday* the 11th of *June*, and the Plaintiff could not possibly have signed his Judgment till the *Monday*, but the Plaintiff's Attorney received the Plea, put it in his Pocket, and kept it three Days before he sign'd Judgment; whereas if he had not been bound to receive it, he should have refused it *eo instanti*, or have applied to the Court or a Judge to have set it aside, as not coming in in Time, or as an ill Plea, or else have demurred, that the Defendant might have had an Opportunity of applying for Leave to amend his Plea. But at all Events the Plaintiff's Attorney is not to determine a Plea to be ill, and therefore a Nullity, and of his own Head and Authority to sign Judgment; besides, he has made Use of this Judgment to oppress the Defendant; he kept
 it

it in his Pocket undiscovered all the Term, and in the Beginning of the long Vacation took the Defendant in Execution, as he was entering the *South-Sea House* with the Sub-Governor Sir *John Eyles*.

Cur', The Judgment is irregular, for the Defendant might plead at any Time before Judgment was signed, and it is agreed on both Sides that the Plaintiff's Attorney received this Plea, and kept it three Days before he signed Judgment; besides the Plaintiff's Attorney cannot say a Plea is ill and therefore no Plea, and sign Judgment thereupon, for that would tend to overturn every Plea that shall be pleaded; it is a high Presumption in Mr. G. to take upon himself the Authority of this Court, and to adjudge the Plea ill, and pronounce Judgment for the Plaintiff: Had the Defendant been an ordinary Tradesman, he might have been intirely ruined by this Piece of Practice; and it is well for Mr. G. that it happened to be otherwise, and that the Defendant was a wealthy Person, and could raise so large a Sum as 320*l.* immediately, to pay into the Sheriffs Hands, and procure his Liberty.

Attorney not to determine that a Plea is ill, and sign Judgment.

The Judgment must be set aside with Costs, and Restitution made of the Money in the Sheriff's Hands.

Browning

Browning *against* Hodgis.

Trin. 5 & 6 Geo. II.

Borret.

On Plea of
Tender, Mo-
ney brought
into the wrong
Office.

RULE to shew Cause why Judg-
ment should not be set aside on
Payment of Costs. The Plaintiff had
pleaded a Tender in Time, but by Mi-
stake paid the Money into Prothonotary
Thomson's Office instead of *Borret's* ;
on shewing Cause the Court dischar-
ged the Rule, the Judgment being re-
gular, but gave the Plaintiff Leave to
plead *de novo*, and bring the Money in-
to Court on Payment of Costs.

Davenhill *against* Barret.

Mich. 10 Geo. II.

Thomson.

A Plea of
Tender not a
Plea within
the Meaning
of a Judge's
Order, giving
Time to plead
pleading an
issuable Plea.

Serjeant *Eyre* moved to set aside a
Judgment. The Defendant took
the Declaration out of the Office, and
obtained an Order from Judge *Denton*
for Time to plead, pleading an issuable
Plea, and taking short Notice of Trial
for the next Assizes ; the Defendant
thereupon offers the Plaintiff's Attorney
a Plea of Tender, which he refused to
accept, and signed Judgment. Serjeant
Birch for the Plaintiff insisted that the
Plea

Plea of Tender was not an issuable Plea within the Meaning of the Judge's Order, and of that Opinion was the Court, and also said that a Plea of Tender could not be pleaded after Time obtained to plead. Can't be pleaded after Time to plead

Note; Chief Justice *Eyre* was always of a contrary Opinion.

King *against* Nichols.

Hil. 12 Geo. II.

Borret.

Treasury, **R**ULE to shew Cause Application to plead a Tender as of last Term may be made in the first four Days of Term.
Jan. 27. why the Defendant should not have Leave to plead a Tender as of the last Term, notwithstanding a general Imparance given by the Plaintiff. The Plaintiff's Attorney objected that this Application came too late, it should have been made on the first Day of Term. *Cur'*, He may apply at any Time within the first four Days of the Term. Rule absolute.

Littlehales *against* Smith.

Easter, 5 Geo. II.

Foley.

OYER is to be demanded before the Rule to plead is out, and if the Defendant be streighten'd in Time, he may apply to a Judge. Oyer to be demanded before Rule out.

Hammond

Hammond *against* Horner, and two others. East. 5 Geo. II.

Cooke.

If Oyer be demanded after the Rule to plead is out, Plaintiff need not give it, but if he does he cannot sign Judgment till next Day in the Afternoon.

DEBT on a Bail-Bond. The Rule to plead was out on *Thursday*; Oyer was demanded on *Friday* about one o'Clock, and given on the same Day about four or five o'Clock. About three Hours after Oyer was given the Plaintiff signed Judgment. *Glyde* for the Plaintiff; *Chapple* for the Defendant, said the Plaintiff needed not to have given Oyer, the Rule to plead being out; but as he had given Oyer, the Time for pleading was thereby enlarged, and therefore the Plaintiff should not have sign'd Judgment till the next Day. *Cur'*, What Time has the Defendant to plead after Oyer given, must he plead *eodem instanti*? No: the Plaintiff's giving Oyer was waiving the Advantage he had, and he ought not to have sign'd Judgment till the *Saturday* in the Afternoon at least. Oyer is to be look'd upon as a Part of the Declaration, and the Defendant must have so much Time to plead after Oyer given, as he had when Oyer was demanded.

What Time to plead after Oyer.

Theedam

Theedam *against* Jackson.

Mich. 6 Geo. II.

Thomson.

THE Court determined that upon craving *Oyer*, the Defendant should have as many Days to plead after *Oyer* given, as he had at the Time *Oyer* was demanded.

The Defendant shall have the same Time to plead after *Oyer* given, as he had when *Oyer* was demanded

Blaxland *against* Burgis.

Mich. 7 Geo. II.

THE Defendant pleaded a Release with a *Profert hic in Cur'* on the 12th of *November* the Plaintiff craved *Oyer*, and on the 14th of *November* in the Afternoon sign'd Judgment for Want of *Oyer* being given him. Serjeant *Chapple* moved to set aside the Judgment, and insisted first, that the Plaintiff should not have signed Judgment in less than 4 Days; and secondly, that there being a Plea in the Office, the Plaintiff before he sign'd his Judgment, should have moved the Court to set aside the Plea. Serjeant *Hawkins* for the Plaintiff insisted, that as to the first Point, the Defendant should have a reasonable Time to give *Oyer*, and that from the 12th of *November* to the 14th of *November*, was a reasonable Time. As to the second

If the Defendant pleads a Deed with Profert, and does not give *Oyer* within a reasonable Time, the Plaintiff may sign Judgment without applying to the Court.

What a reasonable Time.

second Objection, he insisted there was no Need of Application to the Court to set aside the Plea, for when *Oyer* was demanded by the Plaintiff, the Defendant was obliged to give it to verify his Plea. *Cur'* said that from the 12th of *November* to the 14th of *November* was a reasonable Time, and that the Plaintiff craving *Oyer* of the Defendant, was not the same as the Defendant's craving *Oyer* of the Plaintiff; for if the Plaintiff does not give *Oyer*, he delays himself, but when the Defendant delays giving *Oyer*, he stops the Suit, and deprives the Plaintiff of the Benefit of his Action. As to the second Point, they said there was no Need for the Plaintiff to apply to the Court to set aside the Plea, for after *Oyer* craved by the Plaintiff, the Defendant should verify his Plea, and therefore held that this Judgment was regularly sign'd.

Robinson *against* Simonds.

Mich. 5 Geo. II.

Defendant of
Course may
withdraw his
Special Plea
in the same
Term, and
plead the Ge-
neral Issue
without Costs.

Cooke.

SERJEANT *Cheshyre* moved that the Defendant might have Leave to withdraw his Special Plea, and plead the General Issue, without Payment of Costs. Serjeant *Hawkins* insisted for Costs; the

the Chief Justice and *Fortescue* said that the Defendant might of Course withdraw his Special Plea in the same Term it was pleaded, and plead the General Issue.

Anonymus.

East. 11 Geo. II.

THE Defendant may wave his Special Plea, and give the General Issue of Course in the same Term, but can't do so in a different Term, without Leave of the Court. May wave Special Plea and plead General Issue in the same Term.

Richards against Medlicot, an Administrator. East. 5 Geo. II.

SERJEANT *Chapple* moved that the Defendant might have Leave to withdraw a Plea of *Plene Administravit*, generally, and to plead *Plene Administravit* specially, on Payment of Costs. Leave to change a Plea after Issue joined and a Trial lost, denied. Rule to shew Cause. *Eyre* for the Plaintiff said the Defendant came too late, for that the Plaintiff had replied, the Defendant rejoined, the Plaintiff sur-rejoined, to which there was a Demurrer and Joinder, and that the Plaintiff had thereby lost a Trial. *Cur'*, (*Chief Justice absent*) Discharge the Rule.

Wilson

Wilson *against* Southwell.

Trin. 5 Geo. II.

Borret.

Leave to wave
Plea of *Actio*
non accrevit
infra Sex An-
nos, and plead
the General
Issue.

TRespass, Plea *Actio non accrevit infra Sex Annos*, Replication that the Plaintiff was a Prisoner, and therefore not within the Act, which upon Inquiry the Defendant found to be true; whereupon he moved the Court, that upon Payment of Costs, and pleading the General Issue, the former Plea might be set aside. Rule to shew Cause on hearing Council on both Sides made absolute, the Defendant consenting to take Notice of Trial for the next sitting. *Baynes* for the Defendant; *Corbet* for the Plaintiff.

Martindale *against* Galloway, an
Executor. Hil. 7 Geo. II.

Cooke.

Leave to with-
draw a Special
Plene Admini-
stravit, and
plead Plene
Administavit
generally.

Serjeant *Darnal* moved that the Defendant might be at Liberty to withdraw a Special Plea of *Plene Administavit*, and to plead *Plene Administavit* generally. Rule to shew Cause. Serjeant *Chapple* for the Plaintiff. Rule made absolute.

Fawcett *against* Strickland.

Trin. 13 Geo. II.

Cooke.

SERJEANT *Bootle* moved that the De-^{Defendant} fendant might be permitted to with-^{may withdraw} draw his Special Plea, and leave the ^{a Special Plea,} Plaintiff at Liberty to sign Judgment. ^{and let the} Rule to shew Cause. *Eyre* for the Plain-^{Plaintiff take} tiff. *Cur'*, It cannot be denied, for if the Defendant will not defend upon the Trial; it will be the same as if the Plain-^{Judgment.} tiff had Judgment by *Nil dicit*.

Williams *against* Taylor.

East. 5 Geo. II.

PLEA, *Et predict' W. T. ce-* ^{Mistake in a} *nit per C. D. &c. (not saying At-* ^{Plea omitting} *torn' suum) & defendit vim & injuriam* ^{Attorn' suum} *quando, &c. & dicit quod non assump-* ^{not material.} *sit super se modo & forma prout pred'* *W. T. &c. (instead of R. W. the* *Plaintiff). Motion to set aside this Plea.* *Cur'*, as to the first Mistake, said, the Defendant came by himself, which he might do, rejecting *C. D.* and it would do without saying *in propria Persona sua*. As to the second Mistake of naming the Defendant instead of the Plaintiff, it was helped by the Stat. *Eliz.*

X

Constet

Constet *against* Warren.
East. 7 Geo.

Nil debet not
a good Plea
to Debt on
a Judgment,
Bond, or Bill.

ACTION upon a Contract for *Welch* Copper brought in Debt, the Defendant pleaded *Nil debet*; the Plaintiff demurred and had Judgment. Agreed that *Nil debet* is not a good Plea to an Action of Debt on a Judgment, Bond, or Bill, but is to an Action of Debt for Rent upon an Indenture, because the Question is, whether the Rent is due or not.

Albany *against* Griffen & his Wife.
Hil. 9 Geo. II.

Thomson.

General Issue
pleaded infor-
mal.

THE Defendants on a Piece of stamp'd Paper, delivered a Plea in these Words, Albany *against* Griffen and his Wife, *the Defendants plead not guilty*. The Plaintiff signed Judgment. *Wright* moved that the Judgment might be set aside. *Skynner* for the Plaintiff. *Cur'*, This would be sufficient in the *King's Bench* and *Exchequer*, but we must keep to our own Rules. The Judgment is regular.

Turner

Double Pleas.

307

Turner *against* Williams.

East. 12 Geo. II.

Cooke.

Serjeant *Hayward* moved that the Judgment in this Cause might be set aside, on Affidavit that the Defendant had pleaded in Time. Rule to shew Cause. *Belfield* for the Plaintiff shewed that the Defendant had pleaded by an Attorney of another Court, and therefore the Plea was a mere Nullity. *Cur'*, The Judgment is regular, let the Rule be discharged.

Double Pleas.

Oley *against* Andrews.

Mich. 4 Geo. II.

MOTION for Leave to plead double, *Non Assumpsit* and *Non Assumpsit infra Sex Annos*. The Chief Justice said he had inquired of the Judges of the *King's Bench*, and they informed him that such Leave had been given in that Court, but that they could not see any Reason for the doing it, for the Defendant could have the same Advantage on pleading *Non Assumpsit infra Sex Annos*, as he could have on

Leave to plead
Non Assumpsit and *Non Assumpsit infra Sex Annos*,
denied.

Double Pleas.

pleading *Non Assumpsit*, and therefore said as this Court had refused to let the Defendant plead these two Pleas, there was no Occasion to alter the Practice. *Fortescue* said, as the Court of *King's Bench* had agreed that the Plaintiff must make the same Proof upon Trial on *Non Assumpsit infra Sex Annos*, as he must do upon pleading *Non Assumpsit*, he was satisfied. Agreed the Defendant should not plead these two Pleas. *Price* and *Denton* absent.

Holtenvile and Others against
Bambridge. East. 4 Geo. II.

The like double Plea denied.

MOTION to plead *Non Assumpsit* and *Non Assumpsit infra Sex Annos*, denied. *Fortescue dissentiente*, present *Eyre* Chief Justice, *Price* and *Denton*.

Welpdale against Atkinson.
East. 4 Geo. II.

The like double Plea denied.

MOTION to plead double, viz. *Non Assumpsit* and *Non Assumpsit infra Sex Annos*, denied. *Oley* against *Andrews* cited.

Clarke

Clarke *against* Bolton.

East. 5 Geo. II.

SERJEANT *Chapple* moved for Leave to plead double, viz. *Non Assumpsit* and *Non Assumpsit infra Sex Annos*. Leave to plead Non Assumpsit and Non Assumpsit infra Sex Annos.
A Rule was granted for the Plaintiff to shew Cause, which was afterwards made absolute on an Affidavit of Service, the Plaintiff not opposing it.

Goodall *against* Moore.

East. 5 Geo. II.

THE same Case in all Respects. The like
Serjeant *Chapple* for the Plaintiff. Leave.
tiff.

Bourne and Others *against* Butler.

Trin. 10 Geo. II.

Thomson.

SERJEANT *Bootle* moved for Leave to plead Treble, viz. *Non Assumpsit*, *Actio non accrevit infra Sex Annos*, and that the Plaintiff became a Bankrupt. Leave to plead Non Assumpsit, Actio non accrevit infra Sex Annos, and that the Plaintiff was a Bankrupt, denied.
Rule to shew Cause. Serjeant *Draper* for the Plaintiff said that the Bankruptcy was contradictory to the *Non Assumpsit*. *Cur'*, It is so, discharge the Rule.

Dun *against* Holditch, Executor.
Mich. 11 Geo. I.

Leave to plead
Non Assump-
fit, and bring
Money into
Court on the
first Count,
and plead *Non*
Assumpsit in-
fra Sex Annos
to the rest of
the Declara-
tion.

IT was moved that the Defendant might be at Liberty to plead *Non Assumpsit* to the first Count, and bring Money into Court, and to plead *Non Assumpsit infra Sex Annos*, as to the rest of the Declaration denied, yet thought reasonable, if the Defendant could furnish out any Circumstances to induce the Court. 9th November, Agreed *per totam Curiam*, that the Defendant may plead *Non Assumpsit* to the first Count, bring Money into Court, and plead *Non Assumpsit infra Sex Annos* to the rest of the Declaration.

Newman *against* Chandler.
Hil. 2 Geo. II.

Leave to plead
Non Assump-
fit and a Dis-
charge under
a Commission
of Bankruptcy,
denied.

THE Court refused to let the Defendant plead double, *Non Assumpsit* and a Discharge under a Commission of Bankruptcy.

Gibson

Gibson Assignee, &c. *against* Cole.

Mich. 6 Geo. II.

Serjeant *Chapple* moved for Leave to ^{Leave to plead} plead double, *viz.* *Non Assumpsit* ^{*Non Assumpsit* and a Release.} Upon hearing Serjeant *Baynes* for the Plaintiff, the Court denied the Motion, and said the *King's Bench* and this Court had always denied it.

Brewer *against* Gee.

Trin. 6 & 7 Geo. II.

Borret.

Serjeant *Chapple* moved for Leave to ^{Leave to plead} plead double, *viz.* *Infra Ætatem*, ^{*infra Ætatem* and *Non Assumpsit*.} and the General Issue. *Cur'*, Take a Rule to shew Cause. The Rule was afterwards made absolute on hearing Council for the Plaintiff.

Heathfield *against* Allen.

Mich. 8 Geo. II.

Serjeant *Skynner* moved for Leave to ^{Leave to plead} plead double, *viz.* *Non Assumpsit* ^{*Non Assumpsit*, and *Plene Administravit*.} and *Plene Administravit*; denied, they being contradictory Pleas. ^{*Administravit*, denied.}

Double Pleas.

Costa *against* Misfaubin.

Mich. 8 Geo. II.

Cooke.

Leave to plead *Non Assumpsit* and *Plene Administravit*, on Affidavit of having fully administered. SERJEANT *Eyre* moved that the Defendant might have Leave to plead *Non Assumpsit* and *Plene Administravit*. He produced an Affidavit that the Defendant had fully administered. Rule to shew Cause, which was afterwards made absolute.

Jones *against* Body.

East. 12 Geo. II.

Double Plea *Non Assumpsit* and a Discharge under the insolvent Debtors Act, SERJEANT *Draper* moved that the Defendant might have Leave to plead double, *viz.* *Non Assumpsit* and that the Defendant was discharged under the insolvent Debtors Act. Rule to shew Cause. *Comyns* for the Plaintiff. *Cur'* Let the Rule be absolute.

Jarrat *against* Robinson.

East. 8 Geo. II.

Leave to plead General Issue and a mutual Debt, denied. SERJEANT *Hawkins* moved for Leave to plead double, *viz.* the General Issue and a mutual Debt by Way of Set off under the Act of Parliament. *Cur'* They are contradictory ; the Act of Parliament

Double Pleas.

313

Parliament is in the Disjunctive. You may either plead the Set off alone, or set off the Debt under the General Issue. No Rule.

Cofens, an Attorney, *against*
Hetherington. Trin. 14 &
15 Geo. II.

Cooke.

Serjeant *Rootle* moved for Leave to plead double, *viz.* a Special *Plene Administravit* and a Set off of a mutual Debt. Rule to shew Cause. Made absolute on Affidavit of Service.

Melborne *against* Prudom.
Trin. 5 & 6 Geo. II.

Cooke.

Serjeant *Darnal* moved that the Defendant might have Liberty to plead *Non est Factum* and *Plene Administravit*. Rule to shew Cause. *Postea* made absolute on Affidavit of Service.

Bunn an Executor *against* Lucas.
Trin. 10 Geo. II.

Thomson.

DEBT on a Bond. Serjeant *Eyre* moved for Leave to plead double, *viz.* *Solvit ad diem* and that the Bond was delivered as an Escrow. Rule of the Payment

Leave to plead
Solvit ad diem
and Bond deli-
vered as an
Escrow, deni-
ed, no Affida-
vit being made
of the Payment

Double Pleas.

Rule to shew Cause. Serjeant *Hawkins* for the Plaintiff, the Pleas are repugnant, and there is no Affidavit of the Payment. *Cur'*, An Affidavit is necessary in this Case; possibly the Pleas might be consistent, for the Bond might be paid. Discharge the Rule.

Marshall *against* Lawrence.

Trin. 8 & 9 Geo. II.

Borret.

Leave to plead
Nil debet and
Nil habuit in
tenementis, de-
nied.

Serjeant *Skynner* moved for Leave to plead double, *viz.* *Nil debet* and *Nil habuit in Tenementis*. *Cur'*, *Nil habuit in Tenementis* may be given in Evidence on the Plea of *Nil debet*. No Rule.

Dursey *against* Cole.

Hil. 7 Geo. II.

Leave to plead
Not guilty
and Satisfac-
tion, denied.

Serjeant *Eyre* moved for Leave to plead double, *viz.* *Not Guilty and that the Defendant had made the Plaintiff Satisfaction*. Upon hearing Serjeant *Hawkins* for the Plaintiff, the Court denied the Motion, the Pleas being contradictory.

Hooper

Hooper *against* Wood.

Trin. 13 & 14 Geo. II.

Cooke.

SERJEANT *Hayward* moved for Leave to plead double, viz. *Son Assault* and *molliter manus imposuit*. Cur, Let the Plaintiff shew Cause. Motion for Son Assault and molliter manus imposuit.

Stibbs *against* Neeves.

Trin. 10 Geo. II.

Borret.

SERJEANT *Boote* moved for Leave to plead double, viz. *Not Guilty* and *liberum tenementum*. Rule to shew Cause, which was afterwards made absolute on Affidavit of Service. Leave to plead Not Guilty and liberum tenementum.

Church *against* Fendal.

East. 11 Geo. II.

Borret.

SERJEANT *Agar* moved for Leave to plead double, viz. *Damage Feasant* and under a Demise from the Defendant to the Plaintiff. Rule to shew Cause, which was made absolute on an Affidavit of the Service, no one appearing for the Plaintiff, though the Chief Double Plea, Damage Feasant and under a Demise, allowed.

Double Pleas.

Chief Justice said the Pleas seemed to him to be inconsistent.

Baynes *against* Lutwidge.

Mich. 12 Geo. II.

Double Plea,
Distress for
Rent and Da-
mage Feasant.

SERJEANT *Bootle* moved for Leave to plead double, *viz.* A Distress for Damage Feasant and for Rent in Arrear. Rule to shew Cause. *Draper* for the Plaintiff. *Cur'*, Let the Rule be absolute.

Peard *against* Spinks.

Mich. 10 Geo. II.

Thomson.

Leave to avow
two Matters.

IN Replevin, Serjeant *Chapple* moved that the Defendant might be at Liberty to avow two Matters, *viz.* a Justification of the Distress under a Lease, and that the Goods distrained were the Property of the Plaintiff, opposed by Serjeant *Parker*, granted by the Court.

Leighton, Esq; *against* Leighton,
Bart. Mich. 10 Geo. II.

Cooke.

Leave to plead
treble, after
Time to plead
pleading an
issuable Plea.

THE Defendant obtained a Judge's Order for Time to plead, pleading an issuable Plea. Serjeant *Wright* for

for the Defendant moved for Leave to plead a treble Plea. Serjeant *Hayward* for the Plaintiff, the Question was whether the Defendant should have Leave to plead treble after the above Order. *Cur'*, (Chief Justice *and* Comyns *absent*) We will consult the other Judges. Afterwards *Denton* reported the Opinion of nine Judges, that the Defendant was not precluded by the Order from pleading treble, and thereupon the Court made a Rule that the Defendant might plead accordingly.

Long *against* Lingwood.
Hil. 8 Geo. II.

Cooke.

PLEA *Non Assumpsit infra Sex Annos*, Demurrer thereto; the Defendant moves for Leave to add the General Issue *Non Assumpsit* to his Plea. *Cur'*, You cannot add to your Plea after Replication on Demurrer.

Can't add to a Plea after Replication or Demurrer.

Buckley *against* Warren an Attorney. East. 10 Geo. II.

Cooke.

THE Defendant procured a Rule for Leave to bring Money into Court, and afterwards procured a Rule to plead double, *viz. Non Assumpsit* and *Non Assumpsit*

Rule to plead double, after Money brought into Court, discharged.

sumpsit infra Sex Annos. The Court on Motion discharged the Rule to plead double; for by the Words of the Rule, to pay Money into Court, the Defendant must plead the General Issue. *Vide antea* fo. 260. *Bowles and Wheeler, Hil. 9 Geo. 2.*

Cornwal, Bart. *against* Caswell,
Knt. East. 10 Geo. II.

Cooke.

No double
Plea on a pe-
nal Statute.

MOTION to plead double, *viz.* *Quod null' tal' Persona in rerum natura and Nil debet.* A Question arose whether the former be in Abatement or in Bar; for if it be in Abatement it is repugnant to *Nil debet.* Rule to shew Cause. *Chapple and Parker* for the Defendant, *Eyre and Wright* for the Plaintiff. *Cur'*, Let the Rule to shew Cause be discharged: You cannot plead double in an Action upon a penal Statute, and this is one, being to prevent Bribery and Corruption; besides the first Plea is in Abatement, and contradictory to the latter.

Pryor *against* The Earl of Ilay,
 Executor, &c. Hil. 7 Geo. II.

Thomson.

THE Defendant by Leave of the Court had pleaded *Non Assumpsit* and *Non Assumpsit infra Sex Annos*; to the *Non Assumpsit infra Sex Annos* the Plaintiff replied an Original, the Plaintiff rejoined *Nul tiel Record*, and had Judgment. Whereupon he executed a Writ of Inquiry of Damages, and never proceeded upon the Issue of *Non Assumpsit*. Serjeant *Baynes* for the Defendant moved to set aside the Writ of Inquiry. Serjeant *Chapple* for the Plaintiff, insisted that the Plaintiff might enter a *Nolle Prosequi* upon the Issue of *Non Assumpsit*, and take his Execution upon the Issue that was found for him. *Baynes* insisted that both Pleas went to the whole Declaration, and if any one was found for the Defendant, the Plaintiff was barred of his Action. *Curr'*, It is a Judgment only as to Part, and not upon the whole Proceeding, and the Inquiry should not have been executed till the other Issue was tried. We have given the Defendant a double Defence by Rule, and if any one of the Issues be found for the Defendant, he

On a double Plea, unless both Issues be found for the Plaintiff, he cannot have Judgment.

he shall be excused ; therefore this Writ of Inquiry is wrong ; and if this Way of Proceeding was to be allowed, there would be an End of pleading double.

Pryor against The Earl of Ilay,
Executor, &c. Mich. 8 Geo. II.

Thomson.

On a double
 Plea, if either
 Issue be
 found for the
 Defendant,
 the Plaintiff
 cannot reco-
 ver.

ACTION brought upon a promissory Note ; the Defendant pleads two Pleas, viz. *Non Assumpsit* and *Non Assumpsit infra Sex Annos* ; to the *Non Assumpsit infra Sex Annos* the Plaintiff replies an Original, the Defendant rejoins *Nul tiel Record*, and upon this Issue the Plaintiff has Judgment, Issue is join'd upon the *Non Assumpsit*, and the Plaintiff is non-suited upon Trial, but upon the other Issue executes a Writ of Inquiry and takes Damages. *Baines* and *Eyre*, Serjeants, for the Defendant, move to set aside the Inquiry, and insist that these two Pleas go to the whole Declaration ; and that if either be found for the Plaintiff, the Defendant cannot have Judgment. *Chapple* and *Comyns*, Serjeants, for the Plaintiff urge, that by the Statute for the Amendment of of the Law, when
 2
 several

Pleadings.

321

several Matters are pleaded by the Defendant, if any be found for the Plaintiff he shall recover. *Cur'*, This is a Consideration. Adjourn'd. *Postea*, Writ of Inquiry set aside.

Pleadings.

West *against* Nichols.

Mich. 6 Geo. II.

Thomson.

SERJEANT *Chapple* moved to stay Proceedings; the Writ was in *English*, and the Plaintiff had declared in *Latin*, and laid his Damages above 10*l*. which laying his Damages above 10*l*. hinder'd the Defendant from demurring to the Declaration. *Wynne* for the Plaintiff. *Cur'* The Writ served is a *Clausum fregit*, and only to bring the Defendant into Court, and the Plaintiff might declare in *Latin* if the Damages were above 10*l*.

Writ in English, Declaration in Latin.

Parker *against* Mattocks.

Mich. 6 Geo. II.

THE like Case and Determination. *Eyre* for the Plaintiff, *Hawkins* for the Defendant.

Church *against* Jafon, Bart.

Trin. 6 & 7 Geo. II.

Cooke.

Alias dict'
ought to be
in Latin if
so in the Bond.

Alias dict'
not necessary.

DEBT upon Bond, Verdict for the Plaintiff. Serjeant *Chapple* for the Defendant moved in Arrest of Judgment, for that by the late Act Pleadings are to be in *English*, and the Plaintiff has set out the *Alias dict'* in *Latin*. *Eyre* for the Plaintiff. *Cur'* Those Words signify nothing, and will not spoil a good Declaration. There is no Occasion to put in the *Alias dict'*, it is merely a Description of the Bond. *For-tescue*, If the *Alias dict'* had been in *English*, the Declaration would have been naught, and the Plaintiff upon Trial must have been nonsuited. *Reeve* (*Denton* absent) The Statute of *Edward* ordered all Pleadings to be in *Latin*, and the late Act appoints all to be in *English*; if therefore in the intermediate Time there have been Instances of the *Alias dict'* being set out in *English* (and *Eyre* cited several Cases in Point) by the same Reason the *Alias dict'* since the late Act ought to be in *Latin*.

Pledges

Pledges.

Manfield one of the Clerks Prothonotary, &c. *against* Richman.

Easter 2 Geo. II.

Borret.

DEmurrer to a Declaration, and Pledges to a the Want of Pledges was shewn Declaration for Cause. Agreed Pledges may be may be added given at any Time before Judgment. at any Time before Judgment. *Chief Justice* absent; *Chapple* for the Plaintiff; *Belfield* for the Defendant.

Durrant *against* Lynes.

Trin. 10 & 11 Geo. II.

Borret.

THE like Resolution. *Bootle* for the Plaintiff; *Draper* for the Defendant.

Postea.

Makepeace *against* Stevens and others. Hil. 6 Geo. II.

Cooke.

Verdict for the Plaintiff subject to an Order of *Nisi Prius* on a Point of Law, which being a Point of Law arose, whereupon a Verdict was given for the Plaintiff, the Court ordered the *Postea* to be delivered to him.

ISSUE was joined in this Court, on a Trial by *Nisi Prius* at the Assizes, before Mr. Justice *Lee*, one of the Judges of the Court of *King's Bench*; which being a Point of Law arose, whereupon a Verdict was given for the Plaintiff, which by Order of *Nisi Prius* was to stand as a Security for the Plaintiff, and the Matter in Law was refer'd to the Opinion of the Judge, and if his Opinion should be for the Plaintiff, then the Plaintiff was to be at Liberty to proceed on the Verdict; but if his Opinion should be for the Defendant, then the Plaintiff was to pay the Defendant Costs of a Nonsuit to be taxed. This Order was made a Rule of this Court. Judge *Lee* desired the Opinion of this Court on the Matter of Law. And upon Argument the Court was of Opinion for the Defendant; and now a Question arose, whether this Court could order the *Postea* to be delivered to the Defendant, or whether he must apply to the Judge who tried

tried the Cause. Upon Consideration of the Matter, this Court made a Rule for the Delivery of the *Postea* to the Defendant.

Prisoners.

Pletwood *against* Turty.

Mich. 13 Geo. I.

THE Court held that a Prisoner in Custody on an Attachment for a Contempt of the Court, cannot be charged with a Declaration without Leave of the Court. And in this Cause the Court held that the charging the Defendant with a *Capias ad Satisfaciendum* whilst he was in Custody of the Sheriff of *Middlesex* upon an Attachment for a Contempt of this Court, was irregular. In this Cause Justice Price informed the Court, that the *Exchequer* upon consulting with all the Judges, held that a Sheriff could not take Bail upon an Attachment for a Contempt, but that a Judge might.

Prisoner in Custody on an Attachment can't be charged with a Declaration or Execution without Leave.

Sheriff can't take Bail to an Attachment.

Theedam *against* The Warden of
the Fleet. Mich. 5 Geo II.

Prisoner on an
Attachment
for a Con-
tempt, not in-
titled to a
Day-Rule.

THEEDAM petitioned the Court for a Day-Rule, having given the Warden Security ; it appeared that the Petitioner among other Things was charged with an Attachment for a Contempt. *Cur'*, A Person charged with an Attachment for a Contempt, which is a criminal Process, is not intitled to a Day-Rule.

Baldwin and Others *against* O
Carrol. Mich. 11 Geo. II.

Prisoner sur-
rendering him-
self as a Fugi-
tive, can't be
charged with
a Declaration.

QUestion if the Defendant who had surrendered himself as a Fugitive, could be charged in Custody with a Declaration. *Eyre* and *Urlin* for the Defendant ; *Parker* for the Plaintiffs.

Fortescue. I think he may be charged, or else the Subject may be deprived of his Remedy.

Ch. J. The Act of King *William* only says a Man may be charged who is committed ; this Man is not committed.

Ch. J.

Ch. 7. and Comyns. We cannot see why he may not be arrested, but he cannot be charged with a Declaration.

The Plaintiffs consented to waive their Proceedings.

Fisher against Tucker and another.

Hil. 2 Geo. II.

THE two Defendants had entered into a joint Bond to the Plaintiff for Payment of Money ; the Defendant *Tucker* was arrested and in Prison, but the other Defendant absconding, the Plaintiff could not get him arrested, and therefore proceeded to the Exigent in order to outlaw him; and now two Terms being near expired, within which Time the Plaintiff must declare, or the Defendant *Tucker* would be discharged out of Custody ; the Plaintiff moved for Time to declare, in regard the other Defendant could not be outlawed before the End of the Term, but the Court would not give him Time.

Walker *against* Hilton.

Mich. 5 Geo. II.

Borret.

Declaration
against a Pri-
soner on the
5th Day after
Term.

4 Nov. **S**Erjeant *Baynes* moved to set aside a Judgment signed against a Prisoner in the *Fleet*; the Irregularity complained of was that the Declaration was not delivered to the Defendant till the fifth Day after last Term, viz. till *Monday* the 12th of *June*, the Term ending on *Wednesday* the 7th of *June*. Rule to shew Cause. Serjeant *Skynner* shewed Cause, and said it was the constant Practice of the Court to have four intire Law-Days to deliver Declarations against Prisoners, and give Rules to plead; and as *Sunday* was the 4th Day, a Rule could not be given on that Day, but might on the *Monday*. *Cur'*, Discharge the Rule.

King *against* Boswell.

East. 6 Geo. II.

Borret.

After irregu-
lar Declaration
against a
a Prisoner
can't declare
de novo, un-
less

IF a Man be in Custody upon a Declaration irregularly delivered, the Plaintiff shall not be at Liberty to charge him with a new Declaration, unless he be in Custody at another Person's Suit.

Cooper

Cooper *against* Levy.
Mich. 8 Geo. II.

Thomson.

RULE to shew Cause why the Judgment in this Cause should not be set aside, and Proceedings stayed, for that the Defendant being committed to the *Fleet* by Commissioners of Bankruptcy, was charged with a Declaration without Leave of the Court, or of a Judge. *Cur'*, We will not enter into the Question, whether such Leave ought to have been obtained or not, but as the Defendant did not apply to the Court till the Day before the Execution of the Writ of Inquiry. Let the Rule be discharged. He should have applied before Judgment.

Strickland, Bart. *against* Hodgson.
Hil. 8 Geo. II.

Cooke.

THE Defendant was a Prisoner in a County Gaol, and the Plaintiff had delivered a Declaration against him in Custody, filed an Affidavit of the Delivery, and given Rules to plead. Motion to stay Proceedings for Irregularity, and the Irregularity insisted on was, that the Declaration was not entered

Declaration against a Prisoner in a Country Gaol need not be entered with the Prothonotary before Delivery, *aliter* against a Prisoner in the Fleet.

tered in the Prothonotary's Office before it was delivered. The Court held that it was not necessary to enter the Declaration before the Delivery, when the Defendant was in a Country-Prison, either by the Statute 4 & 5 *W. & M. c. 21.* or by the Rule of Court made for the delivering Declarations to Prisoners; and that the entering the Declaration with the Prothonotary, before the Delivery to the Prisoner, was only necessary when the Defendant was in the *Fleet*, it being expressly so mentioned in the Statute, 8 & 9 *W. 3. c. 21.* and therefore refused to stay Proceedings. *Eyre* for the Plaintiff; *Chapple* for the Defendant.

Sampson *against* Warren.

Mich. 11 Geo. II.

Cooke.

No Need of an Affidavit on delivering a Declaration against a Prisoner, where there is an Affidavit upon the Writ, whereupon the Defendant was arrested.

THE Defendant was arrested upon a Process out of the Court of *King's Bench*, and committed for Want of Bail; he was afterwards removed by *Habeas Corpus* to the *Fleet*, where the Plaintiff charged him with a Declaration, without making an Affidavit of the Debt, filing it with the Prothonotary, and marking the Sum sworn to upon the

the Declaration ; the Defendant moved to be discharged upon a common Appearance, the Plaintiff insisted that there being an Affidavit made of the Debt in the *King's Bench* on the taking out of the Writ, upon which the Defendant was arrested, there was no Need of an Affidavit upon delivering the Declaration ; but in Case the Defendant had been a Prisoner at the Suit of another Plaintiff, and the Declaration had come in as a new Charge, there must have been an Affidavit. The Court refused to discharge the Defendant.

Newball *against* James.
Hil. 13 Geo. II.

Borret.

Serjeant *Draper* moved for a *Super-Sedeas* on entering a common Appearance for the Defendant, who was a Prisoner in the *Fleet*, because the Declaration in this Cause which was delivered as a new Charge against the Defendant, in order to hold him to Bail, was not indorsed by the Prothonotary or his Deputy, pursuant to the Rule of *Hil. 8 Geo. 2.* Rule to shew Cause. *Bootle* for the Plaintiff. It appeared that an Affidavit of the Debt had been made, and the Sum sworn to indorsed

When a Declaration is delivered against a Prisoner as a new Charge in order to hold him to Bail, the Declaration indorsed by the Prothonotary should be delivered, and not a Copy.

dorsed on the Declaration by the Prothonotary, but that the Plaintiff's Attorney had delivered only a Copy of the Declaration that was indors'd by the Prothonotary, and a Copy of the Indorsement. *Cur'*, He should have delivered the original Declaration and Indorsement. Rule absolute.

Calvert *against* Goddard.

Trin. 8 & 9 Geo. II.

Thomson.

Defendant superseded on an irregular Execution, ought to be actually discharged, before any new Charge against him by the same Plaintiff.

VErdict for the Plaintiff, whereupon the Defendant was taken in Execution by the Sheriff; the Verdict was afterwards set aside for Irregularity in the Notice of Trial, and a *Supersedeas* was granted for discharging the Defendant out of Custody; but before the Rule was drawn up the Plaintiff lodged with the Sheriff a *Capias ad respondendum* against the Defendant. Serjeant *Hawkins* moved that an Attachment might issue against the Plaintiff's Attorney, and that the Defendant might be discharged with Costs, on entering a common Appearance to the *Capias ad Respondendum*. Rule to shew Cause. *Urlin* for the Plaintiff. *Cur'*, Attachment and Costs are too much to grant. Let the Defendant be discharged

discharged, for he ought to have the full Benefit of the Rule, and be actually discharged before any new Charge against him by the same Plaintiff.

Clark *against* Venner.

Mich. 10 Geo. II.

Cooke.

Serjeant *Ketelby* moved to discharge the Defendant out of Custody upon an Execution; the Defendant had been discharged by *Superseas* for want of the Plaintiff's Proceeding to Judgment; the Plaintiff afterwards recovered Judgment and took the Defendant in Execution. Serjeant *Eyre* opposed the Motion. Judge *Denton* said he had inquired what was the Practice of the Court of *King's Bench* upon such Cases, and had been informed by one of the Judges of that Court, that the constant Practice there was, that if the Defendant was discharged for Want of the Plaintiff's proceeding to Judgment, the Plaintiff after Judgment might take the Defendant in Execution thereon, and the Defendant should not be discharged; but if the Plaintiff had proceeded to Judgment, and the Defendant had been discharged for Want of the Plaintiff's proceeding to Execution, the Defendant should be totally discharged, and could not be afterwards taken

Prisoner discharged for Want of Plaintiff's proceeding to Execution is totally discharged, and can't afterwards be taken in Execution; *aliter* if for not proceeding to Judgment.

taken in Execution on such Judgment
And this was agreed to be the Practice
of this Court.

Clayton *against* Stapp.

Hil. 11 Geo. II.

Cooke.

Prisoner not
lodging his
Superfedeas
till after a Ha-
beas Corpus
ad Satisfaci-
endum, charged
in Execution.

THE Defendant was brought into Court upon a *Habeas Corpus ad Satisfaciendum*, directed to the Warden of the *Fleet*. Serjeant *Agar* objected to his being charged in Execution, for that on the first of *May* last, Judge *Fortescue* had made an Order for a *Superfedeas*, that the *Superfedeas* was lodg'd with the Warden, and allowed, and an Appearance was entered that the Defendant was superfedable the last Term, and ought to have the full Benefit; but the Defendant not having serv'd the Order, nor lodged the *Superfedeas* till after the *Habeas Corpus* was brought, the Court ordered him to be charged in Execution, and said he might apply afterwards as he should be advised.

Ashley

Ashley against Sutton.

Hil. 12 Geo. II.

Borret.

SERJEANT *Eyre* moved for a *Superse-* Defendant by
deas, because the Defendant was not Accident not
charged in Execution in two Terms. Execution in
Rule to shew Cause. *Wright* for the two Terms, no
Plaintiff. It appeared the Plaintiff's At- Superseas.
torney had in the second Term sued out
a *Capias ad Satisfaciendum* directed to
the Sheriff of *Exeter* instead of *Devon*,
the Writ being returned he rectified
the Mistake, re-sealed the Writ, and
sent it back. The Writ was returna-
ble the 25th of *Nov.* the last Return of
the Term, but the Post not coming in at
Exeter till the 26th of *Nov.* the De-
fendant could not be charged in Execu-
tion. The Chief Justice put it upon the
Head of Accident, and said it was plain
the Plaintiff did not design to oppress
the Defendant; *Denton* was of the
same Opinion; *Fortescue A.* doubted,
and was afraid of ill Consequences, and
said the Ignorance of Attornies should
bind their Clients; *Wm. Fortescue* was
of Opinion with the Chief Justice and
Denton, and said the Rules would ex-
tend to this Accident. *Cur'* unani-

mous that Ignorance would have been no Excuse, but as it was a mere Accident discharged the Rule.

Tidmarsh *against* Proctor.

Mich. 9 Geo. II.

Cooke.

Prisoner discharged for Non-payment of the 2 s. 4 d. per Week by the Plaintiff's Executor.

THE Defendant was a Prisoner in Execution, and petitioning to be discharged, was brought up, the Plaintiff gave a Note to pay him 2 s. 4 d. a Week ; the Plaintiff afterwards died, and his Executor failed in the paying the 2 s. 4 d. a Week ; whereupon the Defendant petitioned to be discharged. The Question was, whether the Failure of Payment by the Executor would intitle the Defendant to his Discharge, or whether it was a Case omitted in the Statute ? *Cur'*, The Words of the Act are general, the Note given will bind the Executors, and the Executors are now the Creditors, and will be intitled to the Benefit of the Assignment of the Defendant's Effects ; a Rule was made for the Executors to shew Cause why the Defendant should not be discharged, and was afterwards made absolute for the Defendant's Discharge, upon Affidavit of Service of the Rule upon the Executors,

cutors, no one appearing on their Behalf to oppose it.

Austin against King and his Wife.
Hil. 9 Geo. II.

Cooke.

THE Defendant and his Wife being in Execution, petitioned to be discharged under the Lords Act; the Plaintiff opposing their Discharge and offering to pay them the Allowance; the Question was, whether both together were intitled only to one 2 s. 4 d. per Week, or whether each of them was intitled to 2 s. 4 d. per Week. The Court was of Opinion that the Plaintiff must pay each of them 2 s. 4 d. per Week; then the Plaintiff offered to pay one, and discharge the other. *Cur'*, You must discharge both or neither of them: Whereupon the Plaintiff paid them 4 s. 8 d. and gave his Note to continue it.

Dorrel *against* Bishop.
Easter 13 Geo. II.

Ordered that the Rule for discharging a Prisoner pursuant to the Lords Act, should be served on the Plaintiff's Attorney, the Plaintiff absconding.

RULE for the Plaintiff to shew Cause why the Defendant should not be discharged, pursuant to the Debtors Act. Affidavit that the Plaintiff absconded, and could not be personally served with the Rule: Ordered that Service of the Rule upon the Plaintiff's Attorney should be good Service, and upon Affidavit of such Service, the Defendant was discharged, no one appearing to oppose it.

Roberts *against* Hammond.
Hil. 9 Geo. II.

Coke.

After Prisoner discharged by Virtue of the Statute, the Plaintiff can't bring Debt on the Judgment.

THE Defendant being in Execution was discharged by Virtue of the Act for Relief of Debtors, with Respect to the Imprisonment of their Persons; after which the Plaintiff brought an Action of Debt upon the Judgment. Motion by *Chapple* to stay Proceedings in this Action, opposed by *Eyre. Cur'*, The Judgment by the Act subsists but only so as to intitle the Plaintiff to take out Execution against the Defendant's Effects,

fects, if the Defendant shall after the Discharge have any, but not so as to intitle the Plaintiff to have an Action of Debt upon it; therefore let Proceedings be stayed.

Hand *against* Kelley.

Mich. 11 Geo. II.

THE Defendant being in Prison Prisoner on a upon a *Capias Utlegatum*, was Capias Utlegatum discharged by Virtue of the Insolvent Debtors Act, and afterwards taken up on a new Capias Utlegatum on the same Outlawry: Motion that he might be discharged. Cur' unanimous the Act extends to Outlawries.

Harris an Attorney *against* Figg.

Easter 2 Geo.

WARRANT of Attorney to confess a Judgment taken of the Defendant in Custody; the Judgment was set aside because no Attorney, but the Plaintiff was present. Warrant of Attorney by a Prisoner, to confess a Judgment set aside, no Attorney present.

Anonymus.

Mich. 1 Geo. II.

Warrant of
Attorney to
confess a Judg-
ment by a Pri-
soner good,
if Attorney or
Practicer as
such present
on Behalf of
either Side.

THE Judges agreed in this, that when a Defendant signs a Warrant of Attorney to confess a Judgment in Custody, if there is any Attorney by, or a Practicer as such, either on the Behalf of the Plaintiff or Defendant, it is sufficient.

Dorrington and another, Executors,
against Rogers. East. 5 Geo. II.
Borret.

Judgment by
Warrant of
Attorney of a
Prisoner set
aside, Attor-
ney's Clerk
only present.

SErjeant *Glyde* moved to set aside a Judgment entered by Virtue of a Warrant of Attorney, and to have the Warrant of Attorney deliver'd up, it being taken of the Defendant when he was in Custody, no Attorney being present. It appeared that the Plaintiff's Attorney's Clerk was present; the Court said it was never carried so far as to a Clerk, and therefore set aside the Judgment as irregular, but ordered the Defendant to file special Bail, and accept a Declaration.

Walton

Walton *against* Stanton.

Mich. 7 Geo. II.

Thomson.

Serjeant *Comyns* moved that the Defendant might be discharged out of Execution, the Warrant of Attorney to confess the Judgment whereon he was held being executed when the Defendant was in Custody, and no Attorney present. Serjeant *Darnal* for the Plaintiff shewed that the Defendant himself was an Attorney, or practiced as such ; the Court held this to be sufficient, and would not discharge the Defendant.

Warrant of Attorney to confess a Judgment by a Person in Custody good, tho' no Attorney present, if the Defendant be an Attorney.

Privilege.

Johannet *against* Lloyd.

Hil. 12 Geo. II.

Thomson.

THE Defendant was arrested on his returning from an Attendance in Court upon the justifying his Bail ; Serjeant *Wynne* moved that he might be discharged ; ordered accordingly.

Defendant returning from an Attendance in Court arrested, discharged.

Process.

Smith *against* Anderton.

Mich. 13 Geo. I.

Defendant
shou'd be serv-
ed with a Co-
py of the *Ca-
pias*, and not
of the Original.

THE Defendant was served with a Copy of the Original, and the Question was, whether the Defendant should not have been served with a Copy of the *Capias*, or whether the Service of the Copy of the Original was sufficient. The Court held this Service to be bad, and that the Defendant should have been served with a Copy of such Process as the Sheriff before the making this Act could have arrested the Defendant upon, and set aside the Judgment obtained in this Cause.

Peter *against* Remer,

Mich. 11 Geo. II.

Original not
a Process to
serve on De-
fendant.

MOTION to stay Proceedings; the Defendant was served with a Copy of the Original, upon which Service the Plaintiff entered an Appearance and delivered a Declaration. The Court held this a bad Service, and stayed Proceedings,

Beach against Smith.

Mich. 1 Geo. II.

Cooke.

BY Virtue of the Statute for prevent-
 ing frivolous Arrests, the Plaintiff
 took out a Process into *London* and a
Testatum into *Durham*, and served the
 Defendant with a Copy; and now
 Serj. *Chesbyre* moved to stay Proceedings
 for Irregularity of Service. The Pro-
 cess into *Durham* was read, by which
 the Bishop was commanded to make a
 Mandate to the Sheriff of *Durham*.
Chesbyre held this to be like the Case of
 serving the Copy of an Original, which
 the Court had held to be bad, and in-
 sisted that the Defendant should have
 been served with a Copy of such Pro-
 cess as he could have been arrested upon,
 and upon this Process the Sheriff of *Dur-*
ham could not have arrested the Defen-
 dant; and to this the Court assented, and
 made a Rule to shew Cause why Proceed-
 ings against the Defendant should not be
 discharged. Serj. *Whitaker* came to shew
 Cause against the Rule, and upon hear-
 ing both Sides the Court were of Opi-
 nion, that the Process served upon the
 Defendant, must be such Process as the
 Defendant could have been arrested up-
 on,

on, and therefore the Defendant shou'd have been served with the Bishop's Mandate to the Sheriff. The Court held this to be bad Service, and made the Rule absolute.

Byers *against* Whitaker.

Trin. 8 & 9 Geo. II.

Thomson.

Process into a County Palatine, the Defendant is to be served with a Copy of the Process out of the superior Court.

THE Defendant was serv'd in *Lancashire* with a Copy of Process out of this Court. Serjeant *Comyns* for the Defendant moved that Proceedings might be stayed, and alledged that the Defendant should have been served with a Copy of the Chancellor of the Dutchy's Mandate to the Sheriff. Serjeant *Birch* for the Plaintiff insisted, that by Virtue of the Statute 5 Geo. the Affidavit of Service of Process must be made before the Court out of which the Process issued, therefore it is necessary he should be served with the Process out of the Court of *Common Pleas. Cur'*, Process to be served since the Statute 5 Geo. is the Process out of the superior Court, and this Process is well served, and so it has been determined in *B. R.* the Case of *Beak* and *Smith* in this Court was before the Statute 5 Geo.

Delafield

Delafield and others *against* Jones.

Hil. 13 Geo. I.

Foley.

COMYNS moved the Court to set aside a Judgment signed in this Cause, for that the Process was not served by the Sheriff's Officer, but by the Attorney or his Clerk. The Court held that the Process was well served within the Meaning of the Act.

Process not served by a Sheriff's Officer.

Hall *against* Whilby.

Hil. 7 Geo. II.

Thomson.

Serjeant *Umlin* moved to stay Proceedings, because the Defendant had been served with a Copy of Process directed to the Sheriff of *Suffolk* within the Liberty of *Bury St. Edmunds*. The Court denied the Motion.

Process served within a Liberty.

Alsop against Bagot.

Easter 6 Geo. II.

Cooke.

IT was questioned for what Day the Notice upon the Writ for the Defendant to appear should be, whether for the *Essoin-Day* or the *Appearance-Day*. The Court held the Notice to appear must be for the *Appearance-Day*.

Notice to appear on Process must be for the Appearance-Day.

Alsop

Alsop *against* Bagot.
Trin. 6 & 7 Geo. II.

Cooke.

Notice for the Defendant to appear on Process, must be for the Effoin-Day.

THE Court reconsidered this Case, the Stat. 12 Geo. 1. gives 4 Days for the Defendant to enter his Appearance before the Plaintiff can enter it for him, and the constant Practice upon that Statute has been to compute the 4 Days from the Effoin-Day; the Statute of Geo. 2. adds 4 Days more, in all 8 Days; if the Notice to be given to appear be for the Appearance Day, and the Defendant has 8 Days from thence to appear, he will then have 12 Days to appear, which the Statute never intended. Adjudged *per totam Curiam*, that the Notice for the Defendant to appear must be for the Effoin-Day of the Return. The former Rule made in this Cause was set aside.

Jenner *against* Oatridge.
Hil. 7 Geo. II.

Cooke.

Notice to appear on Process shou'd be for the Effoin, tho' a Sunday.

SERJEANT Baines moved to stay Proceedings for Irregularity in the Service of Process. The Defendant was served with a Writ returnable the first Return of this Term, with Notice to appear

appear on the 20th of *January* being the *Essoin-Day*, which was a *Sunday*. Held *per Cur'* to be good Notice, and the Motion denied.

Green *against* Watkins.

Hil. 7 Geo. II.

Borret.

MOTION to stay Proceedings; Notice for the Defendant was served with a *Monday* wrong Copy of Process, returnable *O^ctob. Hilar.* and Notice to appear on *Monday* the 21st of *January*; Serjeant *Comyns* for the Defendant, insisted that the Day of Return is the 20th of *January*. The Court upon Consideration, and advising with the Prothonotaries, held that the Notice should be to appear on the *Sunday*.

White *against* Washington.

Mich. 12 Geo. II.

Borret.

C*apias* bearing Teste 22d of *August*, Notice to appear 20th *October*, not saying next, bad. returnable *Tres Mich.* was served in *September*, with Notice under the Copy to appear on the 20th of *October*, not saying next. Serjeant *Hayward* moved that the Proceedings might be set aside. Rule to shew Cause. Serjeant *Skynner* for the Plaintiff insisted, that if the Notice

Insufficient
Notice may
be complained
of any Time
before Judgment.

Notice was bad, the Application came too late, because a Declaration was delivered, and a Rule to plead given. *Cur'*, The Notice is bad; upon a defective Notice the Plaintiff may apply at any Time before Judgment: A Mistake in the Process is cured by the Plaintiff's entering an Appearance, which has been always look'd upon to be as effectual for that Purpose as if the Defendant had enter'd the Appearance. The Rule must be absolute.

Simpson against Claypham.
Easter, 8 Geo. II.

Thomson.

Notice differing from the Process, as to the Defendant's Name.

Serjeant *Belfield* moved that the Proceedings might be stayed, for that in the Process served upon the Defendant, he was named *Claypham*, but in the Notice under the Process he was named *Cliffham*. Rule to shew Cause. Serjeant *Eyre* for the Plaintiff. *Cur'*, The Name in the Notice ought to follow the Name in the Writ. The Rule must be absolute.

Atwood

Atwood against Meredith, Executor, in Case. Mich. 11 Geo. II.

Cooke.

THE Plaintiff sued out a Special *Capias* against the Defendant for 50*l.* served the Defendant with a Copy of it, and enter'd an Appearance for him.

Notice must be given on Service of Process, tho' the Writ be Special, and the Debt above

Agar moved to stay Proceedings, 10*l.*
1. Because no *English* Notice to the Copy served, pursuant to the Stat. 12 Geo. 1. 5 Geo. 2. Secondly, No Special Writ should have been sued out. Hil. 8 Geo. 2. *Liniker v. Hudson*, B. R. Trin. 6 & 7 Geo. 2. *Morse* an Attorney against *Farnham*. Hil. 7 Geo. 2. *Longbotham* against *Knap*.

Wright, Notice not necessary, the Statute requires Notice only where the Cause of Action is under 10*l.*

Draper, The Writ is not void, because a special Writ may be sued out if the Action be not under 10*l.* Notice is only necessary when the Writ itself doth not express the Cause of Action.

Cur', The Notice doth not express the Cause of Action, but only the Time of Appearance.

Ch. J.

Ch. 7. The Statute 12 *Geo.* 1. makes three Ways of Proceeding.

1. Where the Action is above 10*l.* and no Affidavit is made, which is the present Case.

2. Where it is above 10*l.* and an Affidavit is made.

3. Where it is under 10*l.*

This being above 10*l.* and no Affidavit made, the Plaintiff would have served the Defendant with a Copy of a Writ without Notice, unless he is obliged to give Notice by the Statute 5 *Geo.*

2. The Statute of the 5 *Geo.* 2. seems to require Notice only in Actions under 10*l.* and this seems to be *Casus omisus*; but as the one Act is explanatory of the other, and therefore may be explained together; and as this has been already determined in this Court in the Case of *Longbotham* and *Knap*, this Proceeding is wrong for Want of Notice.

The other Judges of the same Opinion.

Juncomb

Juncomb *against* Love and his
Wife. East. 8 Geo. II.

Process against *Baron & Feme*, and the Husband only served; the Plaintiff appears for both; held to be good Service. Process against Baron and Feme, Husband only serv'd.

Collins *against* Shapland and his
Wife. East. 12 Geo. II.

Thomson.

ACTION against *Baron & Feme*, Serjeant *Hussey* moved that the Judgment might be set aside, because the Wife had not been served with a Copy of the Process. Rule for the Plaintiff to shew Cause. *Cur'*, It is not necessary to serve the Wife, on serving the Husband the Plaintiff may appear for both, if the Defendants do not appear. Rule discharged. No Occasion to serve Wife with Process.

Worley *against* Bull and another,
Executors. Trin. 8 & 9 Geo. II.

Thomson.

Process against two Defendants Executors, and only one served. Serjeant *Chapple* moved that Proceedings might be stayed. Rule to shew Cause. Process against two Defendants, Executors, both must be serv'd.

Cause. *Eyre* for the Plaintiff said that the Defendants being Executors, Service on one of them was sufficient, for the Execution will be *de bonis testatoris. Cur'*, The other Defendant must be served before you can proceed, or you may outlaw him.

Mathews *against* Partridge.
East. 1 Geo. II.

Process served
at six o' Clock
in the After-
noon of the
Day of the
Return, good
Service.

THE Court was moved to set aside a Judgment for Irregularity; the Irregularity complained of was that the Process was served on the Appearance-Day of the Return, at Six o' Clock in the Afternoon after the Court was risen. Serjeant *Glyde* for the Defendant insisted, that it should be served before 12 o' Clock at Noon. Serjeant *Belfield* for the Plaintiff insisted that the Court sat long on the Day of the Return. *Cur'*, The Process is well served, there is no Fraction of a Day.

Hayne *against* Cane.
Hil. 5 Geo. II.

Process served
at seven o'
Clock at
Night on the
Day of the
Return.

PROCESS served at Seven o' Clock at Night upon the Return-Day; the Defendant moved that Proceedings might be stayed, and would have it presumed that

that the Court was risen when the Process was served, and consequently the Service not good. *Cur'*, He that moves to have Proceedings stayed for Irregularity, must make the Irregularity completely appear; if you had ascertained the Time of the Rising of the Court, and it had appeared that the Process was served after the Court was risen, we could have considered further. No Rule.

Panchand *against* Woolley.

Hil. 12 Geo. II.

Borret.

Serjeant *Draper* moved that the Judgment might be set aside, because when the Defendant was served with a Copy of the Process, the Writ itself was not shewed to him. Rule to shew Cause. Serjeant *Agar* for the Plaintiff. *Cur'*, It is good Service without shewing the Writ. Discharge the Rule.

On Service of Process, Writ need not be shewn.

A a

Cutliffe

Cutliffe an Attorney *against* Standish. Trin. 7 & 8 Geo. II.

A complete Copy of the Process must be served.

Process against several Defendants ; in the Copy served upon the Defendant *Standish*, the other Defendants were not named. *Cur'*, This is wrong, a complete Copy of the whole Process must be served. *Chapple* for the Plaintiff ; *Belfield* for the Defendant.

Smith *against* Wintle.
Trin. 7 & 8 Geo. II.

Borret.

Copy of Process put thro' the Crevice of a Door, the Defendant being within Side.

THE Question was, whether the Process was rightly serv'd. Upon the Rule to shew Cause why Proceedings should not be set aside, it appeared that the Defendant skulked and concealed himself, and was in a public Office with the Door locked ; the Plaintiff's Attorney saw him through the Key-hole of the Door, and that he was very near the Door, and thereupon told him aloud that he had a Copy of a Writ for him, put the Copy through a Crevice in the Door, and told him what the Paper was. *Cur'*, This is good Service ; let the

the Rule be discharged. *Darnal* for the Plaintiff; *Birch* for the Defendant.

Jemmet against Voyer.

Trin. 7 & 8 Geo. II.

Cooke.

MOTION to stay Proceedings for Irregularity in the Service of Process may be complained of any Time before interlocutory Judgment. Irregularity in the Notice on the Copy of the Writ serv'd upon the Defendant. The Plaintiff had proceeded so far as to leave a Declaration in the Office, and give the Defendant Notice of it; the Plaintiff objected that the Defendant applied too late, for that he should have come before Notice of the Declaration. The Court said, that for the future it should be understood that the Defendant had no Need to apply to stay Proceedings for any Fault in the Service of Process, until Notice be given of the Declaration, left in the Office. *Baynes* for the Plaintiff; *Birch* for the Defendant. This was moved again, and it was said that if the Defendant applied to the Court after Notice of the Declaration, and before interlocutory Judgment, it was Time enough.

Prohibition.

The Bishop of Hereford *against*
Croft. Trin. 6 Geo.

Plaintiff must
declare in Pro-
hibition, if
Defendant in-
sist on it.

Regula in Prohibitione fiat. Agreed
if the Defendant insist on it, the
Plaintiff must declare.

Pitt *against* Evans.
Mich. 12 Geo. II.

Thomson.

In Prohibition
Civilians to be
heard on both
Sides, or nei-
ther.

PROhibition. Rule that Civilians
should be heard. Dr. *Lee* attend-
ed to shew Cause why the Prohibition
should not go, but an Affidavit was pro-
duced, that no Civilian could be got to ar-
gue for the Prohibition. Serjeant *Eyre*
for the Prohibition, insisted that a Ci-
vilian ought not to be heard on the
one Side, since no Civilian would attend
on the other Side. Serjeant *Draper* a-
gainst the Prohibition. *Cur'*, Civilians
ought to be heard on both Sides or
neither; but enlarge the Rule, for per-
haps when our Opinion is known a
Civilian may attend on the other Side;
no Civilian attending at the Time ap-
pointed, the Court refused to hear Dr.
Lee, and discharged the Rule.

Pro-

Promissory Notes.

Cotton *against* Horsemanden.
Hil. 1 Geo. II.

Borret.

THE Court held that in Actions upon Promissory Notes, payable on Demand, Interest should be given from the Time of the Demand proved; but that in this Case where upon the Face of the Note it appeared to be for Money lent, Interest should be given from the Date of the Note.

Interest on a promissory Note to be allowed from the Time of the Demand proved, if for Money lent from the Date of the Note.

Randolph *against* Reginder.
Trin. 2 Geo. II.

Foley.

CHAPPLE moved to set aside a Writ of Inquiry executed, and the Objection was that the Jury had given Interest on a Promissory Note to the Day of the executing the Writ of Inquiry; upon hearing *Branthwayte* for the Plaintiff, the Court declared that the Jury should only compute Interest from the Time the Note was payable to the Time of the Return of the Writ: The Court refused to set aside the Writ of Inquiry, but ordered the Attornies on

Interest on a promissory Note to be allowed from the Time the Note is payable to the Time of the Return of the Writ.

both Sides to compute the Interest, and that the Plaintiff should levy no more than the Sum settled on such Computation. The Plaintiff produced a Rule made in the Court of *King's Bench* the last Term, *Oldish v. Cordwell*, whereby the Court had set aside an Inquiry for giving more Interest than was due.

Anonymus.

East. 10 Geo. II.

In an Action
by Indorsee
against the
Drawer of
a Promissory
Note, no need
to alledge No-
tice of In-
dorsement,

ACTION on a Promissory Note by the Indorsee against the Drawer; the Defendant demurred, and shewed for Cause that no Notice was alledged to be given to the Drawer of the Indorsement. *Belfield* for the Defendant. *Hob. Holmes v. Twist. Cro. Jac.* 432. *Hering's Case, Lilly's Entries* 43, 44, 45, 73. *Clift's Entries* 913, 914. *Salk.* 457. *Lawrence v. Jacob. Pas.* 8 Geo. 1. in *C. B.* *Cases in Law and Equity* 43. *Cur'*, This Book is false, for the Judgment was affirmed in *B. R.* *Cur'*, There is no Need of Notice. *Judic. pro Quer'*.

Quare

Quare Impedit.

Crosfield King, Esq; Executor of
John King, *against* George Bi-
shop of Carlisle, the Chancel-
lor, Masters, and Scholars of the
University of Cambridge, Ed-
mund Law and William Gib-
bon, Clerks.

Trin. 11 & 12 Geo. II.

Thomson.

QUARE IMPEDIT. The University of ^{Plaintiff in a} Cambridge claimed the Right of ^{Quare Impedit} ^{examined on} Presentation to the Church in Dispute, ^{Interrogato-} by Virtue of the Statute 12 *Annæ*, Stat. 2. ^{ries touching} c. 14. to vest in the two Universities the ^{secret Trusts} Right of Presentation to Benefices be- ^{for Papists.} longing to *Papists*. Serjeant *Wynne* moved for the Defendants upon the said Statute 12 *Annæ*, that the Plaintiff might be examined touching any secret Fraud or Trust, relating to the Presen- tation to the Rectory of *Graystock* in the County of *Cumberland* in Que- stion, and produced an Affidavit of *Ed-*

Quare Impedit.

mund Law that the Plaintiff was a Trustee for a *Papist* ; upon this the Court made a Rule to shew Cause, as follows.

Friday the 12th of *May*. Upon the Motion of the Defendants, the Chancellor, Masters, and Scholars of the University of *Cambridge*, and of the Defendant *Edmund Law*, and upon the Affidavit of the said *Edmund Law*, it is ordered that the Plaintiff do, upon Notice of this Rule given to him, shew Cause to this Court on *Monday* next why he should not be examined according to the Tenor of an Act of Parliament made in the 12th Year of the Reign of her late Majesty Queen *Anne*, intituled, *An Act for rendering more effectual an Act made in the Third Year of the Reign of King James the First*, intituled, *An Act to prevent and avoid Dangers which may grow by Popish Recusants ; And also of one other Act made in the first Year of the Reign of their late Majesties King William and Queen Mary*, intituled, *An Act to vest in the two Universities the Presentations of Benefices belonging to Papists ; And for vesting in the Lords of Justiciary Power to inflict the same Punishment against Jesuits, Priests, and other trafficking Papists, which the Privy Council*

Stat. 12 Annæ

Stat. 2. c. 14.

Stat. 3 Jac. 1.

c. 5.

Stat. 1 W. &

M. Sess. 1. c.

26.

cil of Scotland was impowered to do, by an Act passed in the Parliament of Scotland, intituled, An Act for preventing the Growth of Popery ; in order to the Discovery of any secret Trusts, Frauds, or Practices relating to the Presentation to the Rectory in Question.

In this Term the Rule was made absolute, as follows.

Saturday 3d June. Upon reading a former Rule made in this Cause the 12th of *May* last Term, and upon hearing Counsel on both Sides, it is ordered, that the Plaintiff shall be examined according to the Tenor of an Act of Parliament made, &c. [*ut supra*] in order to the Discovery of any secret Trust, Frauds, or Practices relating to the Presentation to the Rectory in Question.

In the same Term Scrj. *Wynne* moved the Court for their Direction, in what Manner the Plaintiff should be examined, whether *Viva voce* in Court, by Affidavit, or on Interrogatories. The Court said that by the Act the Examinations are to be subscribed by the Party, therefore *Viva voce* is an improper Way, for we have no Officer to take down what People depose in open Court ; as to Affidavit that is too incertain a Way, for possibly the Affidavit may not be satisfactory ;

factory ; the properest Way will therefore be to examine him on Interrogatories, and then his Examination will be upon Record ; therefore let a Commission be made out under the Seal of the Court to the three Prothonotaries, or any two of them to examine the Plaintiff. The Rule for the Commission is inserted in the Commission.

The COMMISSION.

‘ **G**EOERGE the Second, by the
 ‘ Grace of God, of *Great Britain, France and Ireland*, King, Defender of the Faith, &c. To our trusty
 ‘ and well-beloved *George Cooke*, Esq;
 ‘ our Chief Prothonotary of our Court
 ‘ of *Common Pleas at Westminster*, *Richard Thomson*, Esq; our Second Pro-
 ‘ thonotary of our said Court, and *Thomas Borret*, Esq; our Third Prothono-
 ‘ tary of our said Court, Greeting.
 ‘ Whereas *Crosfe’d King*, Esq; Executor of *John King*, hath impleaded
 ‘ the Right Reverend Father in God
 ‘ *George Lord Bishop of Carlisle*, the
 ‘ Chancellor, Masters, and Scholars of
 ‘ the University of *Cambridge*, *Ed-
 ‘ mund Law* and *William Gibbon*,
 ‘ Clerks, in our said Court of *Common
 ‘ Pleas at Westminster*, before Sir *John
 Willes*,

Willes, Knight, and his Companions,
 our Justices of our said Court, in a Plea
 of *Quare Impedit*, for the Rectory
 of *Graystock* in the County of *Cum-*
berland. And whereas by an Act of
 Parliament made in the 12th Year of
 the Reign of her late Majesty Queen
Anne, intituled, *An Act for rendering*
more effectual an Act made in the
Third Year of the Reign of King
James the First, intituled, *An Act to*
prevent and avoid Dangers which
may grow by Popish Recusants; and
also of one other Act made in the first
Year of the Reign of their late Ma-
jesties King William and Queen Ma-
ry, intituled, *An Act to vest in the two*
Universities the Presentations of Be-
nefices belonging to Papists; And for ve-
sting in the Lords of Justiciary Pow-
er to inflict the same Punishment a-
gainst Jesuits, Priests, and other
trafficking Papists, which the Privy
Council of Scotland was impowered
to do, by an Act passed in the Parlia-
ment of Scotland, intituled, *An Act for*
preventing the Growth of Popery,
 It is Enacted, that every Papist, or
 Person making Profession of the
 Popish Religion, and every Child not
 being a Protestant, under the Age of 21
 Years, of every such Papist, or Person
 pro-

Quare Impedit.

' professing the *Popish* Religion, and
 ' every Mortgagee, Trustee, or Person
 ' any Ways intrusted directly or indi-
 ' rectly, mediately or immediately, by
 ' or for any such *Papist*, or Person
 ' making Profession of the *Popish* Reli-
 ' gion, or such Child as aforesaid, whe-
 ' ther such Trust be declared by Wri-
 ' ting, or not, shall from and after the
 ' Tenth Day of *July*, which shall be
 ' in the Year of our Lord 1714, be
 ' disabled, and is thereby made incapa-
 ' ble to present, collate, or nominate,
 ' to any Benefice, Prebend, or Ecclesia-
 ' stical Living, School, Hospital, or
 ' Donative, or to grant any Avoid-
 ' ance of any Benefice, Prebend, or
 ' Ecclesiastical Living ; and that every
 ' such Presentation, Collation, Nomi-
 ' nation, and Grant, and every Admis-
 ' sion, Institution, and Induction, to be
 ' made thereupon, shall be utterly void
 ' and of no Effect to all Intents, Con-
 ' structions, and Purposes whatsoever ;
 ' and that in every such Case, the
 ' Chancellor, and Scholars of the U-
 ' niversity of *Oxford*, and the Chan-
 ' cellor, and Scholars of the Univer-
 ' sity of *Cambridge*, by what Name
 ' or Names they or either of them
 ' are incorporated, shall respectively
 ' have the Presentation, Nomination,
 ' Col-

‘ Collation, and Donation, of and to
 ‘ every such Benefice, Prebend, or Ec-
 ‘ cleastical Living, School, Hospital,
 ‘ and Donative, set, lying, and being,
 ‘ in the respective Counties, Cities, and
 ‘ other Places and Limits, in the said
 ‘ Act of the third Year of King *James*
 ‘ mentioned, as in and by the said Act is
 ‘ directed and appointed, in the case of
 ‘ a *Popish* Recusant convict, and that it
 ‘ shall and may be lawful for the Court
 ‘ where any *Quare Impedit* shall be
 ‘ hereafter depending, at the Instance
 ‘ of either of the said Chancellors, and
 ‘ Scholars, or their Clerk, being Plain-
 ‘ tiffs or Defendants in such Suit, by
 ‘ Motion in open Court at their Discre-
 ‘ tion, to make any Rule or Order, re-
 ‘ quiring Satisfaction upon the Oath of
 ‘ such Patron and his Clerk, who in the
 ‘ said Suit shall contest the Right of the
 ‘ said University to present to such Be-
 ‘ nefice, or Ecclesiastical Living, by
 ‘ Examination of them or either of
 ‘ them in open Court, or by Commissi-
 ‘ on under the Seal of such Court, for
 ‘ Examination of them, or either of
 ‘ them, or by Affidavit, as the said Court
 ‘ shall find most proper, in order to
 ‘ the Discovery of any secret Trust,
 ‘ Frauds, or Practices, relating to the
 ‘ said Presentation then in Question;
 ‘ and

Quare Impedit.

‘ and that such Examinations should
 ‘ be reduced into Writing, and signed
 ‘ by the Party examined for the Pur-
 ‘ poses therein mentioned. And where-
 ‘ as the said Chancellor, Masters, and
 ‘ Scholars of the University of *Cam-*
 ‘ *bridge*, and *Edmund Law* their
 ‘ Clerk, Defendants in the said Suit,
 ‘ have pending the said Suit, moved
 ‘ our said Court of *Common Pleas* in
 ‘ open Court, pursuant to the said Act
 ‘ to make a Rule or Order requiring
 ‘ Satisfaction, upon the Oath of the
 ‘ said *Crosfield King* the Patron, who
 ‘ in the said Suit contests the Right of
 ‘ the said Chancellor, Masters, and
 ‘ Scholars of the University of *Cam-*
 ‘ *bridge*, to present to the said Bene-
 ‘ fice, or Ecclesiastical Living, in order
 ‘ to the Discovery of any such secret
 ‘ Trust, Frauds, or Practices relating to
 ‘ the Presentation in Question ; and
 ‘ our said Court upon such Motion
 ‘ have made a certain Rule or Order,
 ‘ bearing Date in *Trinity-Term* in the
 ‘ 11th and 12th Years of our Reign,
 ‘ being in the Words following, that
 ‘ is to say, *Crosfield King*, Esq; Exe-
 ‘ cutor of *John King*, against *George*
 ‘ Bishop of *Carlisle*, the Chancellor,
 ‘ Masters, and Scholars of the Univer-
 ‘ sity of *Cambridge*, *Edmund Law* and
 ‘ *William*

William Gibbon Clerks, Friday 9th June, Upon reading a former Rule made in this Cause the 3d Instant, It is ordered that a Commission do issue under the Seal of this Court to the three Prothonotaries, empowering them or any two of them to examine the Plaintiff upon Oath, according to the Tenor of an Act of Parliament made in the 12th Year of the Reign of her late Majesty Queen Anne, intituled, *An Act for rendering more effectual an Act made in the Third Year of the Reign of King James the First, intituled, An Act to prevent and avoid Dangers which may grow by Popish Recusants; And also of one other Act made in the first Year of the Reign of their late Majesties King William and Queen Mary, intituled, An Act to vest in the two Universities the Presentations of Benefices belonging to Papists; And for vesting in the Lords of Justiciary Power to inflict the same Punishment against Jesuits, Priests, and other trafficking Papists, which the Privy Council of Scotland was impowered to do, by an Act passed in the Parliament of Scotland, intituled, An Act for preventing the Growth of Popery; upon Interrogatories, to be exhibited* by

Quare Impedit.

‘ by the Chancellor, Masters, and
 ‘ Scholars of the University of *Cam-*
 ‘ *bridge*, and *Edmund Law* their
 ‘ Clerk, or either of them, in order to
 ‘ the Discovery of any secret Trust,
 ‘ Frauds, or Practices relating to the
 ‘ Presentation to the Rectory in Que-
 ‘ stion; and it is further ordered, that
 ‘ the said *Crosfield King* do from Time
 ‘ to Time attend the said Prothonotaries
 ‘ at such Time and Times as the said Pro-
 ‘ thonotaries or any two of them shall
 ‘ appoint; and it is also ordered that
 ‘ the said *Crosfield King* shall sign his
 ‘ Examination so to be taken, upon the
 ‘ Motion of Serjeant *Wynne*, by the
 ‘ Court. *Know Ye* therefore that we,
 ‘ confiding in your Fidelity and prudent
 ‘ Circumspection, have given and gran-
 ‘ ted, and by these Presents do give
 ‘ and grant to you the said *George Cooke*,
 ‘ *Richard Thomson*, and *Thomas Bor-*
 ‘ *ret*, or any two of you, full Power
 ‘ and Authority to examine the said
 ‘ *Crosfield King* upon his corporal Oath
 ‘ upon Interrogatories, to be exhibited
 ‘ by the said Chancellor, Masters, and
 ‘ Scholars of the said University of
 ‘ *Cambridge*, and the said *Edmund*
 ‘ *Law* their Clerk, or either of them,
 ‘ in order to the Discovery of any secret
 ‘ Trust, Frauds, or Practices relating to
 ‘ the

the Presentation to the Rectory in Question in the said Suit. And we do will and command you the said *George Cooke*, *Richard Thomson*, and *Thomas Borret*, that you or any two of you do examine the said *Crosfield King* upon his corporal Oath, upon Interrogatories, to be exhibited by the said Chancellor, Masters, and Scholars of the said University of *Cambridge*, and *Edmund Law* their Clerk, or either of them, before you or any two of you, in order to the Discovery of any secret Trust, Frauds, or Practices relating to the Presentation in Question in the said Suit; and that you do reduce into Writing the Examination of the said *Crosfield King* thereupon, to be taken before you, or any two of you, and cause him the said *Crosfield King* to sign the same, so that you may have the said Examination so taken and signed before our Justices at *Westminster*; and this you shall not in any wise omit. In Witness whereof we have caused the Seal of our said Court to be put to these Presents. Witness Sir *John Willes*, Knt. at *Westminster*, the 21st Day of *June* in the Twelfth Year of our Reign.

Recordari facias Loquelam.

Taylor *against* Blaxland and others.
Mich. 3 Geo. II.

Foley.

If the Defendant does not file his *Recordari* at the Return, he must give Notice of filing it.

IN Replevin. Motion to set aside a *Retorn' habend'*, the Defendant in Replevin brought a *Recordari facias Loquelam*, returnable *Tres Mich.* did not file it until the 3d of *November*, gave a Rule to declare, and for want of a Declaration sued out a *Retorn' habend'*, It was insisted upon by Serjeant *Chapple* for the Plaintiff, that the Defendant not having filed his *Re. fa. lo.* at the Return, but having stayed until the third of *November*, he should have given the Plaintiff Notice when he filed it. Serjeant *Baynes* for the Defendant insisted that Notice of filing the *Recordari* was not necessary, but that the Plaintiff must take of the *Recordari* being filed at his Peril. The Court said that for the future if the Defendant did not file his *Recordari* at the Day on which it was returnable, he should give to the Plaintiff's Attorney Notice of filing it.

Anonymus.

Anonymus. East. 7 Geo.

IF the Plaintiff brings a *Recordari* Proceeding *facias Loquelam*, he files it with on a *Re. fa. lo.* the Filacer, gives a Rule for the when brought by Plaintiff Defendant to appear, and may have a or Defendant. *Pone, Distringas, &c.* if the Defendant does not appear; if the Defendant brings a *Recordari facias Loquelam*, he also files it with the *Filacer*, and gives a Rule to declare.

Recoveries.

Anonymus. Mich. 9 Geo.

Tenant for Life, Remainder to the Heirs of his Body, may suffer a Recovery. Tenant for Life, with Remainder in Tail, may suffer Recovery.

Hil. 7 Geo. II. Ro. 2.

Cooke.

Jenkinson *Peten'* } *ss. MERCUR*, *Præcipe Writ*
 Staples *gen' ten'* } *vij. Febru-* of Entry,
 Spooner *Vouchee.* } *arij super lectione* &c. in a Recovery amen-
Indentur' quadri- ded by ad-
partite geren' dat' septimo die ding the
B b 2 Names of
bris, several Pa-
rishes.

bris anno sexto Georgii Regis nunc
*secund' inter Thomam Spooner ex prima
 parte, Johannem Staples gen' ex secun-
 da parte, Wil'um Jenkinson gen' ex
 tertia parte & Wil'um Fellowes,
 Armigerum ex quarta parte, fact', &
 lectione le Præcipe cum Cursitar' Com'
 Norf. reliet' & separat' brevium de In-
 gru', Sum', & Sei'a le mittimus &
 transcript' & affirmacon' præfat' Tho-
 me Spooner ordinat' est quod le præci-
 pe, bre' de Ingru' Sum' & Sei'a, De-
 dimus potestatem & return' superinde
 & mittimus & transcript' præd' emen-
 dentur addendo verba Shottesham, St.
 Mary's Shottesham, St. Martin's Shot-
 tesham, All Saints Shottesham, St.
 Benedict's & Shottesham, St. Butolph's
 juxta tenorem & effectum Indentur'
 præd' & qd' recuperatio inter partes
 præd' juxta emendation' præd' perfici-
 cietur.*

Per Cur'.

Ex motion' Servien' Baynes,
Darby.

Deed dated 7th Oct.

Writ of Entry, Teste 11th Oct. return-
 able *Mens. Mich.*

Summons, returnable *Quinden' Martin'.*
Seisina, returnable *Oct. Hil.*

N. The Recovery had passed all the
 Offices except the Prothonotary's.

Jewel

Jewel Demandant, Henzel Tenant,
Lord Harwicke Vouchee.
Mich 12 Geo. II.

Thomson.

23 Nov. **T**HE Lord Chancellor came to the Bar of the Court with the Purse and Mace, and suffered a Recovery as Vouchee. Recovery suffered in Court by Lord Chancellor.

The King *against* Sir Cordell Firebrass, Bart. and others. Mich.
12 Geo. II. Ro. 21, 22.

Thomson.

W RIT of *Deceit* to reverse a Judgment in a Writ of *Deceit* for Recovery suffered of Lands held in Antient Demesne, in the Manor of *Havering Atte Bower* in the County of *Essex*; the Defendants confess the Action, the King's Attorney General enters a *Remittitur dampna* on the Roll. Serjeant *Comyns* for the King moves for Judgment. Rule for Judgment *nisi causa*, which was made absolute on Affidavit of Service, no Cause being shewn.

B b 3

The

Repleader.

The King *against* Comyns.
Mich. 3 Geo II.

THE like Case.

Repleader.

Noble *against* Lancaster.
East. 8 Geo. II.

No Costs on a
Repleader.

AN Action of *Trover* was brought, and the Defendant pleaded *Non Assumpsit*; upon this mistaken Plea the Action was tried, and a Verdict given for the Plaintiff; the Verdict was afterwards set aside, and a Repleader granted; the Defendant would not replead, but suffered Judgment to go by Default; whereupon a Writ of Inquiry was executed, and the Question was, whether the Prothonotary should allow any Costs for the mistaken Proceedings. *Cur'*, There can be no Costs on a Repleader, because there are Mistakes on both Sides. 2 *Salk.* 79.

Replevin.

Replevin.

Whitaker *against* Whitworth and
others. Mich. 5 Geo. II.

IN Replevin Serjeant *Hawkins* moved No Need to
to set aside a *Non Pros* for Want of ^{call for a De-}
calling for a Declaration, denied, and ^{claration in}
said there was no Need of calling for
a Declaration. ^{Replevin.}

Anonymus. Trin. 10 Geo. II.

A Writ of second Deliverance is in Writ of second
the Nature of a *Supersedeas* to a Deliverance a
Retorn' habend', if brought before the ^{Supersedeas}
Retorn' habend' is executed. Not so ^{to a Retorn'}
after an Inquiry *Fieri facias* or *Elegit*. ^{Habend'.}

Rescue.

The King *against* Tyrrel and
others. Trin. 6 & 7 Geo. II.

Cooke.

MOTION to set a small Fine on ^{Rescuers ad-}
the Defendants whom the She- ^{nitted to Bail,}
riff had returned to be Rescuers. The
Court said they could not set a Fine
till after the Trial of the Action brought
by the Defendants against the Sheriff

Scire facias.

for a false Return, but they would admit them to Bail, which was done accordingly.

Scire facias.

Compton *against* Leeds, Administrator. Mich. 13 Geo.

Scire facias
where Defendant died
after Inquiry executed, and
before final Judgment.

18 Nov. **A** Writ of Inquiry was executed; before final Judgment the Defendant died, the Plaintiff sued out a *Scire facias* against Leeds his Administrator, upon the Statute 8 & 9 W. 3. c. 9. to shew Cause why Execution of the Damages assessed should not be had out of the Assets; the Defendant, the Administrator, demurred to the *Scire facias* as not being within the Statute, it restraining *Scire facias's* to Inquiries only, but agreed *per totam Curiam* the *Scire facias* is well sued out. Judgment for the Plaintiff. *Pengelly* for the Plaintiff; *Whitaker* for the Defendant.

Simpson

Simpson *against* Grey & ux'.

Hil. 6 Geo. II.

Borret.

THE Plaintiff took out Execution Judgment of
 on a Judgment of above a Year's ^{above a Year}
 standing without reviving it by *Scire* ^{standing must}
facias. It was insisted for the Plaintiff ^{be revived by}
 that he had been hindred from taking ^{*Scire facias*,}
 out Execution by an Injunction out of ^{tho' the Plain-}
Chancery. Booth v. Booth. Salk. The ^{tiff delayed}
 Court discharged the Execution because ^{by an Injunc-}
 the Judgment was not revived by *Scire*
facias, and said the Plaintiff might have
 revived his Judgment by *Scire facias*
 without Breach of the Injunction. ^{tion out of}
^{Chancery.}

Price and Selby *against* Lewis and
 others. Hil. 8 Geo. II.

Cooke.

Scire facias against Bail, Plea in A- ^{No Need of}
 batement, because there were not ^{15 Days be-}
 Fifteen Days between the *Teste* and ^{tween Teste}
 Return of the Writ of *Scire faci-* ^{and Return}
as. Demurrer and Joinder. *Judic.* ^{*as.*}
pro Quer' quod Def. respondeat ulte-
rius. Per Cur', There need not be 15
 Days between the *Teste* and Return of
 each Writ of *Scire facias*; if there be
 15 Days

Scire facias.

15 Days between the Teste of the first and the Return of the second, it is sufficient.

Heney *against* Whitehead.

Mich. 6 Geo. II.

Cooke.

Scire facias

may be

quash'd before

Plea, without

Costs.

IN the Treasury Chamber. The Plaintiff moved to quash his own *Scire facias*, which was opposed by the Defendant, unless the Plaintiff would pay Costs ; and the Defendant alledged that he had entered an Appearance, and thereby been put to Costs, and said that in all Discontinuances, although only of a Writ, Costs were paid. Adjudged that Costs should not be paid, and that the Practice was that Costs were never paid in Proceedings upon a *Scire facias* until a Declaration was delivered and the Defendant had pleaded.

Pool *against* Broadfield and his

Bail. Mich. 8 Geo. II.

Thomson.

No Costs on

quashing a

Scire facias

before Plea.

SErjeant *Chapple* on Behalf of the Plaintiff moved to quash the *Scire facias*. Serjeant *Eyre* for the Defendant insisted that the Plaintiff should pay
Costs

Scire fieri Inquiry.

379

Costs, for that the Defendant had been put to Costs ; he had attended Judge *Denton* upon the Plaintiff's Summons to shew Cause why the *Scire facias* should not be amended, and had also entered an Appearance. *Cur'*, No Costs is to be paid on quashing a *Scire facias* until after the Defendant has pleaded.

Scire fieri Inquiry.

Copley *against* Delany.

East. 1 Geo. II.

A *Scire fieri Inquiry* set aside with Notice to be Costs for Want of Notice, and ruled that for the future Notice should be given. given of executing a Writ of Scire fieri Inquiry.

Tilney *against* Watson.

Mich. 14 Geo. II.

Thomson.

HELD *per Cur'* that the Plaintiff is obliged to give Notice of executing a Writ of *Scire fieri Inquiry*. Notice of Scire fieri Inquiry. *Dra-per* for the Plaintiff; *Bootle* for the Defendant.

Serjeants.

Serjeants.

Swaine *against* Girdler Serjeant at
Law. Trin. 7 & 8 Geo. II.

Borret.

Serjeant at
Law suable
by Original
only.

THE Plaintiff filed a Bill against Serjeant *Girdler* in an Action of Trespass on the Case for Work done, Money laid out, &c. the Defendant pleaded in Abatement that he was suable only by Original and not by Bill; the Plaintiff demurred, and the Defendant joined in Demurrer. *Cur'*, The Bill must abate, Serjeants at Law in respect of their Privilege are like unto Prothonotaries Clerks and Judges Clerks, neither of them being bound to a personal Attendance (as Attornies are) and therefore are to be sued by Original only. Judgment *quod billa cassetur*. *Hawkins* for the Defendant; *Eyre* for the Plaintiff. *Baker v. Swindal un' Cler' Pronot' Tempest*, Mich. 10 W. 3. Ro. 360. *in Point*.

Sheriffs.

Sheriffs.

Arne *against* Neeler.

Mich. 9 Geo II.

Cooke.

AN Attachment was granted against ^{Attachment} Mr. *Benson* for not returning a ^{against one} Writ ; upon Affidavit of Service of the ^{who acts as} Rule upon Mr. *Benson*, he acting as Un- ^{Under-Sheriff} der-Sheriff. It was objected that he was ^{for not re-} not the Under-Sheriff. *Cur'*, He acts ^{turning a} as such, and that is sufficient, for it is ^{Writ.} difficult to know who is the real Under-Sheriff. Present *Fortescue* and *Reeve* ; absent *Eyre* Chief Justice and *Denton*.

Maurice Esq; *against* Griffith.

Hil. 12 Geo. II.

Thomson.

SErjeant *Skynner* moved for an At- ^{Motion for} tachment against the Sheriff of *Me-* ^{Attachment} *rionethshire* for not returning a *Testa-* ^{against a} *tum Capias ad Satisfaciendum.* *Cur'*, ^{Welsh Sheriff} Let the Sheriff shew Cause. ^{for not return-} ^{ing a Writ.}

Anonymus.

Slander.

Anonymus. East. 13 Annæ.

Some of the Words Actionable, others not, and intire Damages, where the Verdict shall be good.

IF several Words be spoken at one Time, some of them actionable, and others not, although intire Damages be given, the Verdict will be good, because it shall be intended that the Damages were given for the Words that were actionable; but if the Words were spoken at several Times, and some of them are not actionable, and intire Damages are given, then it is bad.

Smith *against* Heywood.

East. 8 Geo. II.

Borret.

Judgment arrested in Slander, some of the Words being not Actionable, and general Damages given.

ACTION for Words, there were several Sets of Words laid; Verdict for the Plaintiff, and general Damages: The Court held some of the Words not actionable, and therefore Judgment was arrested. Motion for a *Venire facias de novo*.

Smith *against* Richardson.

Mich. 11 Geo. II.

ACTION for Words, charging the Plaintiff with stealing the Defendant's Small Beer; on Trial at *Oxford* before Baron *Fortescue*, the Judge gave the Defendant leave to examine Witnesses to prove the Occasion of the Words, the Defendant offered to prove that the Words spoken were true, which Proof was refused, it amounting to a Charge of Felony.

Where Words import a general Charge of Felony, the Truth of them can't be given in Evidence in Mitigation of Damages, where a particular Charge it may.

Skynner, The Defendant should have been allowed to give this Evidence upon the General Issue, 1 *Sid.* 151. *Drake v. Beere*, the Malice and Falstiy of the Words is the Gift of the Action, *Winpenny v. Cowdry*, B. R. Sitting after Mich. Term 1713, before *Parker* C. J. Words said of a Tradesman, that he was a Soldier, and entered in the Guards. *Cro. Jac.* 90, 91. the Truth of the Words was only in Mitigation of Damages, 1 *Sid.* 236, *Beckford* against *Clarke*.

Eyre contra, Nothing ought to be given in Evidence on the General Issue that amounts to a Justification, 1 *Inst.* 183. *Trials per Pais* 202. 2 *Lev.* 81. 1 *Salk.* 287. *Watson* against *Sparks*,
Skynner

Skynner 321. *Hob.* 168, 174, 175.
Stukely v. Butler, 1 *Rolls Abr.* 87.
Cur' advisar'.

Capital, We will advise with all the Judges.

Denton, Inquire into the Case *Gery v. Harding* before *Raymond C. J.* at the Sittings in *Middlesex*, *Hil.* 12 *Geo.* 1. Defendant in an Action for Words, admitted to give the Truth of them in Evidence in Mitigation of Damages.

Fortescue, Bishop of *Salisbury* against *Nash*; An Action was brought for saying the Plaintiff preach'd Lies in the Pulpit; the Defendant's Counsel offered to prove the Truth of the Words in Mitigation of Damages. *Macclesfield C. J.* refused to let them, and threaten'd to commit the Counsel.

Friday 11th of *November* the Judges met, and all agreed that where the Words import a general Charge of Felony, it ought not to be given in Evidence in Mitigation of Damages.

Eight of the Judges were of Opinion that where the Words import a particular Charge, it may be given in Evidence. *Smith v. Harrison.* 13 *W.* 3.
Cary v. Harding. *Hil.* 12 *Geo.*

Four *contra.*

Summons.

Bias, his Wife, and Goodflesh
against Lyel. Trin. 10 Geo. II.

Thomson.

TRespafs upon the Case; Motion that Proceedings might be stayed, for that the Plaintiff had proceeded by Summons and *Distringas*: Rule to shew Cause. The Question was, whether the Statutes for preventing frivolous and vexatious Arrests did not take away this Method of proceeding as against common Persons; in *Mich.* Term 11 Geo. 2. the Rule was discharged. *Draper* for the Plaintiff; *Corbet* and *Hayward* for the Defendant.

Proceedings
by Summons
and *Distringas*
against
common Per-
sons not taken
away.

C e

Time.

Time.

Anonymus. Easter 8 Geo. II.

When Com-
putation by
Lunar Months

WHEN by Articles Time is limited by Months, the Computation must be by *Lunar* Months at 28 Days to a Month, and not by Kalendar Months.

Trespas.

Preston *against* Foster.

Mich. 13 Geo.

Where the
Lord of a
Manor may
maintain Tref-
pas against
his Tenant.

THE Lord of a Manor can't maintain an Action of Trespas against his Tenant unless he be a Copyholder or Tenant at Will ; if he be a customary Tenant, and set forth the Custom, the Lord can't maintain the Action of Trespas, but the Court must be supposed to be a Stranger to the Tenant's being a customary Tenant, unless he set it out himself.

Trial.

Trial.

Nicholson *against* Collison.

Mich. 13 Geo.

TH E Defendant was a practising Attorney, had Chambers in *Clifford's Inn*, and a House above 40 Miles from *London*; only 12 Days Notice of Trial were given. Motion to set aside the Verdict for insufficient Notice. On shewing Cause agreed *per totam Curiam*, that Notice to the Defendant's Agent, or at his Chambers, was sufficient, and therefore Eight Days Notice was sufficient; the Rule to shew Cause was discharged.

Eight Days Notice of Trial sufficient, Defendant an Attorney having Chambers in *Clifford's Inn*, and a House above 40 Miles from *London*.

Whitehead *against* Dinely Goodere.

East. 5 Geo. II.

Borret.

RULE to shew Cause why the Verdict should not be set aside for want of 14 Days Notice of Trial, the Defendant living at *Charlton* in the County of *Worcester*. *Darnal* for the Defendant; *Eyre* for the Plaintiff said, the Defendant was arrested in Town, and was in Town Nine Days after the Notice of Trial, but went away before

14 Days Notice of Trial tho' Defendant in Town when arrested, and Notice of Trial given.

the Trial *prout* Affidavit. *Cur'*, (Chief Justice absent), Let the Rule be absolute.

Gorman *against* Boyle, Esq;
Mich. 8 Geo. II.

Cooke.

14 Days Notice of Trial, the Defendant living in Ireland.

SERJEANT *Chapple* moved that the Verdict might be set aside, because only Eight Days Notice of Trial was given, and the Defendant lived in *Ireland*; the Defendant had made no Defence at the Trial. Rule to shew Cause. *Eyre* for the Plaintiff, said that the Defendant had no settled Habitation, was in Town three Months lodging at a Bagnio, tho' he is now Abroad. *Cur'*, The Plaintiff should have given 14 Days Notice of Trial; the Rule must be absolute.

Swale an Attorney *against* Leaver.
Mich. 9 Geo. II.

Thomson.

On Trial by Proviso, Defendant must give 14 Days Notice of Trial, if the Plaintiff would have been bound to give the same Notice.

17 Nov. SERJEANT *Wynne* moved that the Nonsuit at *Nisi Prius* might be set aside, the Plaintiff not appearing at the Trial, because the Defendant who lived in *Nottinghamshire*, and carried the Cause to Trial by Proviso

vifo in *London*, had given but Eight Days Notice of Trial, when he ſhould have given 14 Days Notice of Trial. But though the Plaintiff moved on the Return of the *Habeas Corpora*. The Court (*Chief Juſtice* abſent) would not receive his Motion, becauſe he had ſuffered himſelf to be Nonſuit, and was out of Court.

18 Nov. Serjeant *Eyre* moved this Matter a-new, and inſiſted that the Defendant was as much bound to give the ſame Notice of Trial by Proviſo, as the Plaintiff would have been, in Caſe he had proceeded to Trial, and if ſo this Notice given by the Defendant was irregular, and an irregular Notice was no Notice, and the Plaintiff not bound to appear at the Trial. He alſo inſiſted that if the Plaintiff had appeared, and ſtood a Verdict, the Appearance would have been deemed ſuch a Defence as to have prevented the Plaintiff from taking Advantage of the inſufficient Notice, and the ſame Objection might be made if there had been no Notice, that though the Plaintiff was out of Court at *Niſi Prius*, he had the Day in Bank here, viz. the Day of the Return of the *Habeas Corpora*. Cur', Take a Rule for the Defendant to ſhew Cauſe. Serj. *Wright* ſhewed Cauſe,

and alledged that the Plaintiff was an Attorney, and lived in *Staple's Inn*; therefore the Reason of the Rule did not extend to him, and Eight Days Notice was sufficient. *Cur'*, An irregular Notice is no Notice, the Defendant ought to have given 14 Days Notice of Trial, the Plaintiff was not bound to appear at the Trial on the Eight Days Notice; therefore let the Rule be absolute.

Hood *against* Darby.
East. 3 Geo. II.

Short Notice
of Trial, what.

MOTION to set aside a Verdict, the Defendant's Attorney having no Notice of Trial till after the Assizes at *Dorchester* were begun. On shewing Cause it appeared that the Defendant's Agent in Town had applied to the Plaintiff's Agent for Leave to amend his Plea, and thereupon consented to take short Notice of Trial; and it likewise appeared that two Days Notice of Trial had been given to the Defendant's Agent. A Question then arose what was short Notice of Trial, and upon the Certificate of Sir *George Cooke* and Mr. *Borret*, Prothonotaries, that two Days Notice was sufficient, it being so in Cases of Countermands.
Price,

Price, Denton, and Fortescue, Justices, (Chief Justice, and Foley Prothonotary, being absent) discharged the Rule for shewing Cause; but the Defendant offering to pay Costs, the Court let him in to try the Cause de novo upon Payment of Costs. Eyre for the Plaintiff; Chapple for the Defendant.

Buckson *against* Pellow.

Mich. 5 Geo. II.

Cooke.

WHERE a whole Term's No-
 tice of Trial is to be given, it
 must be given before the Effoin-Day of
 the Term. *Chapple* for the Defendant;
Eyre for the Plaintiff.

Where a
 Term's No-
 tice of Trial,
 it must be gi-
 ven before the
 Effoin-Day of
 the Term.

Geale *against* Chapman.

Easter, 6 Geo. II.

Thomson.

MOTION to set aside a Verdict
 for insufficient Notice of Trial,
 there having been no Proceeding for
 a Year after Issue joined; the Defen-
 dant had made no Defence at the Trial;
 Rule to shew Cause; the Plaintiff said
 Notice of Trial was given the Assizes
 before, which was a Proceeding, and

Notice of
 Trial, a Pro-
 ceeding with-
 in the Year.

the Defendant was ready and might have made a Defence if he would, but thought fit to lay by, that this Action was only for a Trespass in entering on a Wharf, and the Right was no Way determined by this Verdict; the Defendant offered to pay Costs, and said the Damages were extravagant. But the Court said this would introduce Delay, and seemed to be a Contrivance to get over the Assizes, and therefore discharged the Rule for shewing Cause. *Eyre* for the Defendant; *Darnal* for the Plaintiff.

Coates *against* Hammond.
East. 13 Geo. II.

Whether a whole Term's Notice of Trial should not be given where there have been no Proceedings for three Terms.

ISSUE joined in *Hilary* Term 1738, and Notice of Trial given on the 8th of *February* in that Term, which Notice was afterwards countermanded; the Plaintiff gave new Notice of Trial on the 26th of *January* 1739, and proceeded to Trial at the last Assizes; the Defendant moved that the Verdict might be set aside, insisting that the last Notice ought to have been given before the *Essoin*-Day of *Hilary* Term. The Practice appearing to be doubtful, the Court ordered that the Verdict should be set aside, but that the Costs should attend

attend the Event of the Suit. *Burnet* for the Plaintiff; *Bootle* for the Defendant. N. The Rule of *East. 13 Geo. 2.* was made on this Occasion.

Powey *against* Walker.
Mich. 4 Geo. II.

THE Question was, whether Notice of Trial could be countermanded when the Record was made a *Remanet*, and agreed it could be countermanded.

Notice of Trial may be countermanded, tho' Record made a *Remanet*.

Goodright, Lessee of Hawkey,
against Hoblyn. Mich. 8 Geo. II.
Borret.

Ejectment for Lands in *Cornwall*, Notice of Trial was given in Town, and a Witness was sent from *London*; the Plaintiff gave a Countermand of the Notice of Trial in the Country three Days before the Commission-Day. The Witness went as far as *Exeter* before he heard of the Countermand. On a Motion for Costs for not proceeding to Trial according to Notice, the Question was, whether the Countermand should not have been given in Town? *Eyre* for the Defendant; *Belfeld* for the

Countermand of Notice of Trial may be given in the Country two Days before the Commission-Day.

the Plaintiff. *Cur' Advisar'*. In *Easter* following; the Court were unanimously of Opinion that the Defendant was not intitled to Costs, and said that Countermands and Notices of executing Writs of Inquiry, may be given in the County, but Notice of Trial must be given in Town, and that the Countermand would have been good, if it had been given but two Days before the Commission-Day.

Smith the Younger *against* Hoff.
Mich. 11 Geo. II.

Smith.

Notice of Trial countermanded and continued in the same Notice contradictory, Verdict set aside.

S Erjeant *Wright* moved to set aside a Verdict, the Plaintiff gave Notice of Trial for the first Sitting within Term, then gave Notice that he countermanded the Notice of Trial for the first Sitting, and continued it to the second Sitting, tried the Cause and had a Verdict, the Defendant making no Defence at the Trial. *Cur'*, You cannot countermand and continue in the same Notice, they are Contradictions; the Verdict must be set aside. *Agar* for the Plaintiff.

Stafford

Stafford *against* Thompson.

Mich. 14 Geo. II.

Thomson.

Serjeant *Bootle* moved that the Defendant might be allowed Costs, because the Plaintiff did not proceed to Trial pursuant to Notice. The Action was laid in *London*, and the Defendant's Witnesses who lived in *Lincolnshire* were brought up to Town on the Plaintiff's Notice of Trial. Rule to shew Cause. Serjeant *Skynner* for the Plaintiff; Notice of Trial was given for the *Monday*, and countermanded on the *Saturday*; the Question was, whether this was a good Countermand? *Thomson*, Prothonotary, was positive that it was a good Countermand; *Cooke* and *Borret*, Prothonotaries, absent; *Paramor* and *Barnes*, Secondaries, were of a contrary Opinion; *Fothergill* Secondary was doubtful. *Cur'*, We will consider of it. The next Day the three Prothonotaries were in Court, and were unanimous in Opinion, that it was good Countermand; the Secondaries as before. Several Attornies who were in Court were asked their Opinions, and they all declared the Notice of Trial was well coun-

Notice of Trial for the Monday countermanded on the Saturday, good.

countermanded. *Cur'*, Let the Rule be discharged.

Boyce *against* Twist and others.
Trin. 6 & 7 Geo. II.

Thomson.

Notice of Trial
al can be con-
tinued but
once.

CUR', Continuing Notice of Trial from one Sitting to another is like short Notice, and Notice cannot be continued above once, much less from the last Sitting to the next Term, which is above Eight Days. It is all one whether the Plaintiff says, *I give you Notice*, or, *I continue my Notice*, provided there be full Eight Days Notice.

Higgins *against* Steward.
Hil. 4 Geo. II.

Foley.

Notice of Trial
al to Defen-
dant when his
Attorney is
known, is bad.

HELD *per totam Curiam*, That Notice of Trial, or of executing a Writ of Inquiry, given to the Defendant when his Attorney is known, is not good Notice; but that when the Defendant's Attorney is not known, Notice of Trial or of executing a Writ of Inquiry may be given to the Defendant himself.

Williams against Jones.
East. 7 Geo. II.

Cooke.

ACTION of Assault and Batte- Defendant
ry, Plea *Son Assault Demesne*; may try the
Replication *de Injuria sua propria* Cause by Pro-
and Issue thereupon joined in last vifo, before
Michaelmas Term. The Plaintiff a whole Term
gave Notice of Trial for the Sitting after has interven'd
Michaelmas Term; countermanded and
gave fresh Notice for the second Sit-
ting in *Hilary* Term, and countermand-
ed that Notice; whereupon the Defen-
dant gave a Rule to enter the Issue, and
went to Trial by Provifo at the Sitting
after *Hilary* Term; the Plaintiff not ap-
pearing at the Trial was nonsuited, and
now *Chapple* and *Eyre* for the Plaintiff
moved that the Nonsuit might be set aside,
suggesting that the Defendant could not
regularly try the Cause by Provifo till
Easter Term. *Darnal* for the Defen-
dant. The Court over-ruled this Objec-
tion; then the Plaintiff prayed that the
Nonsuit might be set aside on Payment
of Costs. *Cur'*, The Issue lay upon the
Defendant, and his Witnesses have been
examined at the Trial, besides the Cause
is gone by the *Non Pros*, if the Plain-
tiff

tiff had appeared at the Trial, and a Verdict had been found against him; this might have been set aside if there had been any Irregularity.

Deighton *against* Ellis.

Mich. 12 Geo. I.

Borret.

Trial put off
for two Terms

3d Nov. **R**ULE to shew Cause why a Trial should not be put off till *Easter* Term next. 6th of *November* made absolute. *Branthwayte* for the Plaintiff; *Whitaker* for the Defendant.

Williams *against* French.

Trin. 2 Geo. II.

Cooke.

Trial put off
two Terms.

A RULE was made in *Easter*-Term last, for the Plaintiff to shew Cause this Term, why the Trial should not be put off till *Michaelmas* Term next; the Case of *Deighton v. Ellis* was cited, whereupon the Court made the Rule absolute, but upon the Peril of Costs, if further Time should be desired.

Stratford *against* Marshal.
East. 8 Geo. II.

Borret.

SERJEANT *Hawkins* moved that the Trial put off for two Terms. Trial in this Cause might be put off till next *Michaelmas* Term, upon an Affidavit that a material Witness was gone to Sea, and not expected in *England* till *August* next. Rule to shew Cause. *Skynner* for the Plaintiff insisted, that the Trial ought not to be put off for above one Term, and that if there should be Occasion the Defendant might then apply again. *Cur'*, It is sworn that the Witness is not expected home till next *August*; therefore let the Rule be absolute.

Roberts *against* Downes an Attorney. East. 7 Geo. II.

Borret.

NOTICE of Trial was given for Motion to put off a Trial. *Tuesday* the 14th of *May*. On *Monday* the 13th of *May* Serjeant *Umlin* moved that the Trial might be put off. The Court made a Rule to shew Cause the next Day, but declared that for the future they would not receive any Motion for putting off a Trial, unless it was made at the least two Days before the Trial.

Days before the intended Day of Trial. Serjeant *Wright* for the Plaintiff. On shewing Cause it appeared that the Defendant had given Notice of setting off a Debt, and that the Witness who was sworn to be absent was material as to that Point only. *Cur'*, That is a collateral Defence, no Trial as yet has been put off upon that Account; the Rule must be discharged.

Sellon against Chamberlayne.

Trin. 11 & 12 Geo. II.

Cooke.

Motion to put off a Trial should be at least two Days before the Day of Trial.

Notice of Trial for the *Thursday*; Serjeant *Comyns* on the *Wednesday* moved that the Trial might be put off. *Cur'*, Your Application comes too late; you should have come at least two Days before the Day for Trial, the Defendant had Eight Days Notice of Trial. No Rule.

Martindale against Shipman.

Hil. 12 Geo. II.

Thomson.

Motion to put off Trial must be made two Days before the Day of Trial.

Notice of Trial for *Thursday*; the Defendant's Agent received a Letter by *Monday's* Post, that a material Witness

Witness was taken ill at *Nottingham* ; he gave Notice on the *Tuesday*, and moved on the *Wednesday* that the Trial might be put off ; *Eyre* for the Defendant. Rule to shew Cause. *Skynner* for the Plaintiff. *Cur'*, It is the Practice of this Court that no Motions of this Kind shall be received, unless made two Days before the Day appointed for the Trial, we cannot dispense with it, unless some extraordinary Emergency makes it necessary ; in this Case on the Defendants own shewing, he might have given Notice on the *Monday* after the Post came in, and moved it on the *Tuesday*. The Rule must be discharged.

Carter *against* Uppington.

Mich. 7 Geo. II.

MOTION to put off a Trial for Affidavit of Want of a material Witness ; a third Person made Affidavit that he was acquainted with the Nature of the Cause, and that *A. B.* was a material Witness for the Defendant. The Court refused to put off the Trial because the Defendant himself did not swear that *A. B.* was a material Witness. Want of material Witness for putting off a Trial should be made by the Defendant.

D d

Eyre

Eyre *against* —
Mich. 7 Geo. II.

Cooke.

Of putting off
a Trial for
want of a ma-
terial Witness.

WHEN a Motion is made to put off a Trial for want of a material Witness; the Affidavit must set out an Expectation of the Witness's returning by such a Time, the Defendant himself must swear the Witness is material (absolutely) and without whose Testimony he cannot safely proceed to Trial, as he is informed and believes. When a Witness has a settled Residence Abroad, the Court will not put off the Trial, because there is no Expectation of his coming at all; but if the Witness should write hither, and promise to come over in a reasonable Time, the Court might consider of it.

Gostwick, Esq; *against* Throgmorton. Trin. 10 Geo. II.

Thomson.

Trial put off
for want of a
material Wit-
ness.

SERJEANT *Draper* moved that the Trial might be put off, the Reason was, a material Witness was obliged to go to *Bristol* Fair, and had settled and appointed several People to meet

meet him as usual at that annual Fair.
Rule to shew Cause. Serjeant *Urtin*
for the Plaintiff. *Cur'*, Let the Rule
be absolute.

Truby against Nichols. The Same
against Gardiner. Trin. 6 & 7
Geo. II.

Cooke.

ACTION for Words. Motion to put off the Trial upon the common Affidavit; the Court thought it unreasonable to put off the Trial in an Action for Words (though never knew the Distinction which the Chief Justice started between Actions for Words and other Actions) because it did not appear by the Affidavit that the Witness was in Company, neither did it set out the Nature of his Evidence, which might have induced the Court to have considered it further, and therefore the Court denied the Motion. *Eyre* for the Plaintiff; *Darnal* for the Defendant.

Motion to put off a Trial in an Action for Words denied.

Bud *against* Milward.

Hil. 10 Geo. II.

Thomson.

Trial in Slander put off.

ACTION for scandalous Words; the Defendant moved on an Affidavit of the Absence of a material Witness, that the Trial might be put off. Rule to shew Cause. *Chapple* for the Defendant; *Eyre* and *Agar* for the Plaintiff objected, that it did not appear that the Witness was present when the Words were spoken, and cited the Case of *Truby* against *Nichols*, and *Truby* against *Gardiner*. *Trin.* 6 & 7 Geo. 2. The Court gave their Opinion *seriatim*, and made the Rule absolute notwithstanding this Case, saying, that there was no Reason to encourage these Actions more, nor indeed so much as other Actions.

Anonymus. Mich. 4 Geo.

Prothonotary may tax Costs for not going to Trial, at Discretion.

AGREED by the Judges in the Treasury, that the Prothonotary may tax Costs for not going on to Trial at Discretion.

Reading

Reading *against* Grafton.

Mich. 13 Geo. I.

Cooke.

THE Judges were moved in the Treasury for their Directions to the Prothonotary in taxing Costs both for the Plaintiff and Defendant for not going on to Trial; the Case was this, the Defendant gave Notice of Trial by Proviso, the Plaintiff also gave Notice of Trial, neither went on to Trial or countermanded, and both got Rules for Costs for not going on to Trial. Sir *George Cooke* Prothonotary doubted, whether both were intitled to Costs; and the Judges were of Opinion that as both Sides gave Notice of Trial, so so likewise both Sides were intitled to Costs for not going on to Trial.

Both Plaintiff and Defendant gave Notice of Trial, neither went to Trial, both intitled to Costs.

Walter *against* Packer.

Mich. 2 Geo. II.

Cooke.

THE Court was moved for the Prothonotary to allow the Plaintiff his Costs for the Defendant's not going on to Trial, pursuant to Notice. The Defendant had given Notice of Trial, pursuant to Notice.

Defendant a Pauper obliged to pay Costs for not going on to Trial, pursuant to Notice.

D d 3

Trial by Proviso.

Trial by Proviso, but neither tried the Cause, nor countermanded the Notice. The Doubt was, whether the Defendant being a *Pauper* should pay any Costs; the Court said it was merely discretionary in them to oblige him to pay Costs or dispauper him; the *King's Bench* had dispauper'd, and the *Exchequer* had given Costs; *Foley* Prothonotary said this Court had given Costs; the Court directed the Prothonotary to allow the Plaintiff his Costs; afterwards the Costs were taxed and demanded, and the Defendant gave another Notice for Trial by Proviso; and thereupon Serjeant *Whitaker* for the Plaintiff moved that the Defendant might be stayed from trying his Cause until he had paid the Costs for not going on to Trial pursuant to the first Notice. *Cur'*, Let the Defendant shew Cause. *Postea* Rule made absolute on Affidavit of Service.

Defendant giving a second Notice of Trial, Proceedings stayed till Costs of the first Notice paid.

Duel *against* Stow.
Mich. 4 Geo. II.

Cooke.

Costs for not going on to Trial, tho' the Defendant had entered a *Ne recipiatur*. **M**OTION to set aside Rules for Costs, for not going on to Trial, at the Sittings in *Middlesex*, though the

the Defendant had entered a *Ne recipiatur*. Serjeant *Eyre* for the Plaintiff insisted, that the Defendant having prevented the Plaintiff from entering his Record, and going on to Trial, ought not to have any Costs. The Prothonotaries *Foley* and *Borret* acquainted the Court that they had constantly allowed Costs for not going on to Trial at the Assizes when *Nerecipiatur*s had been entered, and at the Sittings in *London* and *Middlesex*; Sir *George Cooke* Prothonotary would not say it had not been done, but excepted to the Words of the Rule, which were that Costs should be taxed for the Defendant *pro ejus Attendencia*, and that as a *Ne recipiatur* being entered by the Defendant, he had no Need to attend. *Cur'*, There is the same Reason that the Defendant should have his Costs at the Sittings in *London* and *Middlesex* as at the Assizes, and it hath been constantly allowed at the Assizes; we will not set aside the Rule.

Brockhurst *against* Copson,
Mich. 2 Geo. II.

No new Trial
without Costs.

MOTION for a new Trial, Justice *Denton* informed the Court that Judge *Page* who tried the Cause said it was a Verdict contrary to Evidence and against his Direction; and that if in any Case a new Trial ought to be without Costs, he thought in the present Case it was proper; *Sed per totam Curiam* a new Trial cannot be granted, without Costs.

Letgoe, Lessee of Wheeler *against*
Pitt. Mich. 8 Geo. II.

Not usual to
grant new Trial
in Ejectment,
where Verdict for
the Plaintiff,
aliter if for
the Defendant

MOTION for a new Trial on Payment of Costs, the Verdict was for the Plaintiff, and it was said on the Behalf of the Plaintiff, that it was never usual to grant new Trials in Ejectment, because a fresh Ejectment might be brought and the Cause tried over again. *Cur'* unanimous, it hath not been usual to grant new Trials in Ejectment, where the Verdict hath been for the Defendant, because the Plaintiff may bring a fresh Ejectment, and

and no other Disadvantage happens to him; but where the Verdict hath been for the Plaintiff it is otherwise, and new Trials have been granted; for there the Consequence of not granting a new Trial is the Alteration of the Possession of the Premises in Question; but as the Chief Justice who tried the Cause is of Opinion the Cause ought to be tried over again, a new Trial was granted on Payment of Costs.

Philips *against* Fowler.

Mich. 9 Geo. II.

Cooke.

MOTION for a new Trial, after ^{Motion for a new Trial after Motion in Arrest of Judgment.} a Motion made in Arrest of Judgment last Term, objected to as irregular and against the constant Practice of the Court; but it appearing by an Affidavit of two of the Jurymen that the Verdict was given (after a Division of the Jury on Consultation) by balloting, and that the first Knowledge thereof came to the Defendant in the ^{Verdict given by Ballot set aside.} last Vacation the Court (the *Chief Justice* and *Denton* being absent) granted a Rule for the Plaintiff to shew Cause. In *Easter* 9 Geo. 2. *Chapple* and *Eyre* shewed Cause, the Court being

ing full gave their Opinions *seriatim*. The *Chief Justice*, *Denton*, and *Comyns* were clear that the Verdict should be set aside, deeming it a Nullity. *Fortescue* did not concur with the other Judges, but gave no Opinion, though he inclined not to set the Verdict aside. *Cur'*, Let the Verdict be set aside on Payment of Costs. Lord *Fitzwalter's* Case, *Salk.* 647.

Willis, an Attorney *against* Ben-
net. Mich. 11 Geo. II.

Cooke.

No Motion
for a new Tri-
al after the
first four Days.

*S*Erjeant *Belfield* moved for a new Trial after the four Days were expired. *Cur'*, We will make you a Rule for the Plaintiff to shew Cause, because such Motions have been hitherto indulged; but we declare that hereafter no Motion in Arrest of Judgment or for a new Trial shall be received after the first four Days, from the Return of the *Habeas Corpora*.

Reynolds *against* Simonds. Easter
13 Geo. II.

Motion for a
new Trial
must be made
within the first
four Days of
the Term.

*M*OTION for a new Trial made after the first four Days of the Term. *Cur'*, The Application comes
100

too late ; we have determined that these Motions shall never be received after the first four Days of the Term. *Skin-
ner* for the Defendant.

Talbot and others *against* Pyot.

Mich. 13 Geo. II.

THE Court was moved to set aside a *Non Pros* at the Affizes and for a new Trial, but the Court would not grant it, because by the Plaintiffs becoming Nonsuit they were out of Court, and Serjeant *Baines* informed the Court that the *King's Bench* had denied the same Motion this Term, and for the same Reason.

Plaintiff being
nonsuited at
the Affizes,
new Trial de-
nied.

Hill, Esq; Lord Hilsborough *against*
Jefferys, Esq; Trin. 7 & 8
Geo. II.

Borret.

ACTION for a criminal Conver- sation with the Plaintiff's Wife. Damages laid to 50,000*l.* Serjeant *Chapple* for the Plaintiff moved for a Trial at Bar, and produced an Affidavit that the Plaintiff had a great Number of Witnesses to examine. Rule to shew Cause. *Darnal* for the Defendant.

Trial at Bar
in an Action
for criminal
Conversation.

dant. Rule made absolute. The like was granted in the Court of *King's Bench*, in the Cause of the Duke of *Norfolk* against *Sir John Germaine*.

Trove.

Talbot *against* Spear
Trin. 10 & 11 Geo. II.

Trove for a
Parcel of old
Iron.

TROVER (*inter alia*) for a Parcel of old Iron, Verdict for the Plaintiff and general Damages; Motion in Arrest of Judgment; a Parcel of old Iron is too general. *Styles* 95. 3 *Salk.* 366. 1 *Vent.* 114. *Cro. Jac.* 664. *Bancroft* against *Hoo.* *Salk.* 366. *Cur' advisar' postea.* *Judic. pro Quer'.*

Variance.

Variance.

Holmes *against* Holmes.
Easter, 6 Geo. II.

Thomson.

MOTION to set aside a Verdict, because there was a Variance between the Issue delivered, and the Record of *Nisi Prius*; this was an Action of Debt on a Bond, to which *Non est factum* was pleaded; the Variance was an *a* for an *o* in the *Alias dict'*, viz. *de Oldaxenhope* instead of *Oldoxenhope*. The Chief Justice and Fortescue thought it material, as to the Issue, but Reeve (*Denton* absent) thought otherwise, and a Debate arose, and concluded if the Defendant had craved Oyer of the Bond, and set it out; it would have been Part of the Description of the Bond, and would have been the same as if the Plaintiff had said the Defendant, *per Nomen*, in the Addition of the *Alias dict'*, &c. The Chief Justice came over to Reeve's Opinion, but Fortescue looked upon it as

Variance in the *Alias dict'* after *Non est factum* pleaded, whether material.

Variance.

a sufficient Description of the Bond, without setting out *Oyer* of the Bond, and thought it a material Variance as to the Issue. *Cur'*, Enlarge the Rule; we will consider further of it.

Rye *against* Crossman.

Trin. 7 & 8 Geo. II.

Cooke.

Variance between the Issue delivered and Return of *Nisi Prius*.

Serjeant *Baynes* moved that the Verdict might be set aside for a Variance between the Issue delivered and the Record of *Nisi Prius*, viz. the *Et similiter* was left out in the Issue and inserted in the Record of *Nisi Prius*; the Defendant had made no Defence at the Trial. Rule to shew Cause. *Chaple* and *Eyre* for the Plaintiff. The Court held this to be a material Variance, and not amendable.

Venire facias.

Tray *against* Smith.

Easter 6 Geo. II.

Venire facias need not be awarded at Length.

Serjeant *Darnal* moved in Arrest of Judgment, for that the Proceedings being in *English* the Award of the *Ve-*

nire facias in the Record of *Nisi Prius* was, that the Sheriff should cause to come Twelve good and so forth, whereas it was insisted that the Whole should have been at Length. Upon hearing Serjeant *Baines* for the Plaintiff, the Court held the *Venire facias* to be well awarded.

Smith, an Attorney, *against* Hayward. East. 8 Geo. II.

Cooke.

THIS was an Action for Words, *Venir. facias de novo*, where Verdict for the Plaintiff and intire Damages; the Plaintiff had laid several Sets of Words in his Declaration, and upon a Motion in Arrest of Judgment Part of the Words were held to be not actionable, and thereupon Judgment was arrested; then the Plaintiff moved that a *Venire facias de novo* might be awarded upon the Rule of *Michaelmas* 1654. S. 24. *Cur'*, Be it so on Payment of Costs. *Birch* for the Plaintiff; *Darnal* for the Defendant.

Penrice

Penrice *against* Jackson.

Trin. 11 & 12 Geo. II.

Thomson.

24 Jurors returned to the *Venire facias* and 48 to the *Habeas Corpora*, Verdict set aside.

SERJEANT *Parker* moved that the Verdict might be set aside with Costs, because the Sheriffs of the City of *Worcester* had returned no more than 24 Jurors to the *Venire facias* filed in the *Habeas corpora* Office, but had returned 48 Jurors in the Panel annexed to the *Habeas corpora*, the Defendant had made no Defence at the Trial. Rule to shew Cause. *Skinner* and *Eyre* for the Plaintiff, It is helped by the *Stat. 18 Eliz. 21 Jac. 1. 5 Geo. 1. Parker* for the Defendant, it is contrary to the Statute 3 *Geo. 2.* the Question is whether the Intention and Letter of the Statute ought to be pursued or not. *Cur'*, It is expressly contrary to the express Words of the Statute, and to the Reason of the Statute. Let the Rule be absolute as to setting aside the Verdict, but discharged as to Costs.

Venue.

The Earl of Stamford *against*
Browne. Trin. 1 Geo.

Scandalum Magnatum. Agreed can't *Venue* not to
alter the *Venue*. be changed
in *Scand' Mag'*.

Lord Griffen *against* Buckley.
Trin. 10 Geo. II.

Thomson.

THE same Resolution.

Ward *against* Colclough.
Trin. 8 & 9 Geo. II.

Cooke.

THE Court refused to alter the *Venue* not to
Venue in an Action upon a Pro- be chang'd on
missory Note, and Justice *Reeve* said the a Promissory
King's Bench had refused it. Note.

Rice *against* Vinal. Hil. 10 Geo. II.

Cooke.

Serjeant *Chapple* moved that the *Ve-* *Venue* not to
nue might be changed. Rule to shew be changed
Cause. Serjeant *Eyre* for the Plaintiff on an Action
said that there was a Count in the De- for a Promis-
claration upon a Promissory Note. *Cur'*, sory Note.
Let the Plaintiff make an Affidavit that Affidavit that
there is a real
there Note.

there is a real Note, which he did, and thereupon the Rule was discharged.

Watson *against* Wallis.

Mich. 12 Geo. II.

Cooke.

Venue not to be changed on a Promissory Note.

SERJEANT *Ketelby* moved on the common Affidavit, that the *Venue* might be changed. Rule to shew Cause. Serjeant *Draper* for the Plaintiff said, that this was an Action for a Promissory Note, payable to Bearer, and that there was no other Count in the Declaration. *Cur'*, This is good Cause, and according to the settled Practice. Let the Rule be discharged.

Dent an Attorney *against* Lambert.
East. 7 Geo. II.

Thomson.

Venue can't be changed, where an Attorney is Plaintiff, tho' in an Action of Assault and Battery.

SERJEANT *Eyre* moved on the common Affidavit, that the *Venue* might be changed from *Middlesex* into *Suffolk*. Rule to shew Cause. *Skynner* for the Plaintiff; the Plaintiff is an Attorney, and sues as such, and therefore has a Right to lay his Action in *Middlesex*. *Eyre*, This is an Action of Assault and Battery, and the Plaintiff sues as an Attorney. *Cur'*, So he may in any Case; discharge the Rule.

Welland

Welland *against* Frument.

Trin. 7 & 8 Geo. II.

Cooke.

RULE *nisi* to change the *Venue* from *Middlesex* into another County; the Plaintiff insisted that he was an Attorney, and therefore intitled to lay the *Venue* in *Middlesex*; to this it was answered, that the Plaintiff had sued by common *Capias*; and therefore had waived his Privilege. *Cur'*, As the Plaintiff has not sued by Attachment of Privilege, he can only be considered as a common Person. Rule absolute. *Wright* for the Plaintiff; *Baynes* for the Defendant.

Venue may be changed from *Middlesex*, tho' the Plaintiff be an Attorney, if he sues by *Capias*

Mills *against* Johnson an Attorney.

Mich. 10 Geo. II.

Thomson.

THE Plaintiff filed a Bill against the Defendant who was an Attorney, the Defendant appeared there to, and the Plaintiff delivered him a Declaration, wherein the *Venue* was laid in *London*. Serjeant *Urlin* for the Defendant moved to have the *Venue* changed into *Middlesex*, where his Attendance as an Attorney was required. The Court made a Rule to shew Cause.

Attorney, when Defendant, has no Privilege to change the *Venue*.

Serjeant *Bootle* for the Plaintiff insisted, that although an Attorney has Privilege to sue in *Middlesex*, yet as a Defendant he has no such Privilege, but might be sued in any County, which the Court agreed to, and discharged the Rule. *Carth.* 126. *Showers* 148.

Girdler, Serjeant at Law, against
Hatthews. Mich. 11 Geo. II.

Cooke.

Venus may be changed tho' the Plaintiff be a Serjeant, if he sues by common Capias.

MOTION to alter the *Venus* from *Middlesex* into *Staffordshire*. Rule to shew Cause. Shewed for Cause that the Plaintiff was a Serjeant at Law, and had a Right to sue in *Middlesex*. 2 *Salk.* 670, 668. 1 *Mod.* 64. 2 *Showers* 176, 242. *Skinner* and *Comyns* for the Plaintiff; *Parker* for the Defendant, A Serjeant at Law hath a particular Writ of Privilege. *Brev' Judic'* 4. *Vidian's* Entries. *Herne* 203. A Declaration for him, but if he does not make Use of his Writ of Privilege, he waves his Privilege.

Ch. 7. It hath been determined that if an Attorney sue by Common Process, he waves his Privilege. A Serjeant hath a Writ of Privilege, and if he will not make Use of it, but sue by common Process, there is no Difference between the Case of a Serjeant and the Case of an

an Attorney ; a Barrister at Law hath a Right to sue in *Middlesex*, but he hath no Writ of Privilege.

Girdler, I ought not to be in a worse Condition than a Barrister at Law ; I am intitled to the Privilege of *Westminster-Hall* ; my Privilege of a Barrister is not merged by my being a Serjeant.

Fortescue, There is no Difference between the Privilege of the Hall and the Privilege of the Court.

Cur', Let the Rule be absolute for changing the *Venue*.

Cole against Gowing.
Mich. 6 Geo. II.

Cooke.

Serjeant *Baynes* moved that the *Venue* might be changed, upon an Affidavit that *the several Promises* in the Declaration mentioned, if any such were made, were made in *Sussex*, and not in *London*, &c. Rule to shew Cause. Serjeant *Hawkins* said that the Plaintiff would undertake to give material Evidence in *London*. *Cur'*, We ought not to have made the Rule, the Affidavit is wrong, it should have been that *the Plaintiff's Cause of Action*, if any

Affidavit to change the *Venue* wrong.

such

such he hath, did arise, &c. therefore let the Rule be discharged.

Lister *against* D' Oiley.

Mich. 14 Geo. II.

Thomson.

Affidavit for changing the *Venue* informal.

SERJEANT *Belfield* moved that the *Venue* might be changed ; the Defendant made Affidavit that the several Promises in the Declaration contained, if any such were made, were made at, &c. *Cur'*, The Affidavit is informal, it should be that the Plaintiff's Cause of Action, if any such he hath, arose at &c. No Rule.

Belshaw *against* Porter.

Mich. 7 Geo II.

Borret.

Affidavit for changing the *Venue* insufficient, not being positive.

MOTION to change the *Venue*. Rule *Nisi*, which, on shewing Cause was discharg'd ; for that the Words of the Affidavit, upon which the Rule *Nisi* was made, were that the Plaintiff's Cause of Action, if any, arose in the County of *Bucks*, and not in the County of *Middlesex*, or elsewhere out of the County of *Bucks*, to the Defendant's Knowledge and Belief, which Words were held to be insufficient, as not being

ing positive. *Skynner* for the Plaintiff;
Comyns for the Defendant.

Costar and his Wife *against* Standen.
Hil. 8 Geo. II.

Thomson.

RULE to shew Cause, why the *Ve-* After Plea too
nue should not be changed dis- late to move
charged, the Defendant having pleaded to change
before he applied to have the *Venue* the *Venue*.
changed.

Lucas *against* Rudd.
Mich. 10 Geo.

Cooke.

SErjeant *Birch* moved that the *Ve-* Defendant
nue might be changed. Rule to pleads after
shew Cause. *Umlin* for the Plaintiff Rule nisi,
shewed for Cause that the Defendant to change the
had pleaded since the making the Rule *Venue*, no Wai-
to shew Cause; and therefore insisted, ver of the
that the Defendant by pleading had wa- Rule
ved the Rule. Mr. Justice *Denton*
(the *Chief Justice* and Justice *Comyns*
absent) at first seemed to think that
the Defendant by pleading had wai-
ved his Rule. Mr. Justice *Fortescue*
was of Opinion he had not, and
at length Mr. Justice *Denton* came

E c 4 into

into Justice *Fortescue's* Opinion, and the Rule was made absolute.

Smith *against* Jeffery.

Mich 9 Geo. II.

Cooke.

Venue not to be changed after Time to plead.

SETTLED that a Motion for changing the *Venue* is not to be received after Time given to plead by a Judge. *Chapple* for the Plaintiff; *Birch* for the Defendant.

Newby, Executor *against* Burton.

Mich. 10 Geo. II.

Thomson.

After Time to put in Bail, the *Venue* may be changed, but not after Time to plead

MOTION to change the *Venue*, which was opposed, because the Defendant had obtained a Judge's Order for Time to perfect his Bail; he undertaking to plead an issuable Plea; and it was insisted that after having had Time for that Purpose, he could not have the *Venue* changed. *Cur'*, If the Defendant had obtained Time to plead, pleading an issuable Plea, it would have been too late to move to have the *Venue* changed, but it is not too late after Time to put in Bail.

Blackstock

Blackstock *against* Payne.

Mich. 13 Geo. II.

SERJEANT *Agar* moved that the *Venue* *Venue* may be might be changed. Rule to shew Cause. Serjeant *Skynner* for the Plaintiff shewed for Cause that the Defendant had got a Judge's Order for an Impar lance. *Cur'*, Let the Rule be made absolute ; an Impar lance is a Matter of Right, but an Order for Time to plead is *ex Gratia*.

Ball *against* Young.

Hil. 9 Geo. II.

Cooke.

THE Rule to plead was out on *Monday* ; upon the *Tuesday* the Defendant took out a Summons for the Plaintiff to attend Mr. Justice *Fortescue* on the *Thursday* to shew Cause why the Defendant should not have Time to plead. On the *Thursday* Serjeant *Belfield* for the Defendant moved that the *Venue* might be changed. Rule to shew Cause. *Wright* for the Plaintiff insisted that the Defendant was not intitled to have the *Venue* changed after a Summons for Time to plead ; and of this Opinion was the Court, and thereupon discharged the Rule.

Ellis

Ellis *against* Chorke.

Mich. 12 Geo. II.

Venue not to
be changed
after Summons
for Time to
plead.

RULE to change the *Venue* discharged; the Defendant having taken out a Judge's Summons for Time to plead.

Gouthouse *against* Blaxland.

East. 12 Geo. II.

Thomson.

Motion to
change the
Venue after
Summons for
Time to plead
too late.

Serjeant *Comyns* moved that the *Venue* might be changed. Rule to shew Cause. Serjeant *Wright* for the Plaintiff; the Defendant took out a Judge's Summons for Time to plead, before the Rule for pleading was out. *Cur'*, (Chief Justice absent,) discharge the Rule.

Thomson *against* Rand.

Hil. 12 Geo. II.

Motion on the
last Day of
Term to
change the
Venue too late.

LAST Day of Term, Motion that the *Venue* might be changed; Affidavit of Notice of the Motion. *Cur'*, The Plaintiff cannot have an Opportunity of shewing Cause. No Rule.

Cumpton

Cumpston *against* Buckby.

Hil. 14 Geo. II.

Thomson.

SERJEANT *Willes* moved on the last Day of this Term, that the *Venue* might be changed from *Westmoreland* to *Leicester*. *Cur*, Such Motions are generally not to be received on the last Day of a Term; but in this Case the *Venue* being laid in *Westmoreland*, the Cause can't be tried till the *Summer Assizes*; therefore let the Plaintiff shew Cause on the first Day of next Term why the *Venue* should not be changed.

Motion to change the *Venue* on the last Day of Term receiv'd

Hill *against* Wadley.

Hil. 14 Geo. II.

Borret.

SERJEANT *Belfield* for the Defendant moved the last Day but one of this Term, that the *Venue* might be changed from *Worcestershire* to *Gloucestershire*. Rule to shew Cause. *Draper* for the Plaintiff; the Defendant comes too late, it is impossible to get an Answer out of the Country. *Cur*, Let the *Venue* be changed, unless the Plaintiff shall signify to the Officer that he will undertake to give material Evidence,

Motion to change the *Venue* on the last Day but one of the Term.

dence, which if he will do, let the Rule be discharged.

Atwood *against* Kennedy.

Hil. 14 Geo. II.

Thomson.

Venue not to be changed where the Plaintiff may lose a Trial.

Serjeant *Bootle* moved that the *Venue* might be changed from *York* to *Northumberland*. *Cur'*, We never change the *Venue* where the Plaintiff may lose the Assizes. No Rule.

Denifon *against* Law.

Mich. 5 Geo. II.

Venue arising in a County Palatine, Rule to shew Cause why it should not be laid in an adjacent County.

ACTION laid in *London*, the Cause of Action arose in the County Palatine of *Lancaster*. Serjeant *Comyns* moved upon a full Affidavit that the *Venue* might be changed, but the Court said that it could not be done, because it ought to be removed into the proper County, and not elsewhere, and it never was removed into a County Palatine; the Serjeant produced a Case, *Holebrook against Toft*, Hil. 9 Geo. 1. where it had been laid in an adjacent County. *Cur'*, Take a Rule to shew Cause.

Herbert

Herbert *against* Shaw.

Trin. 6 & 7 Geo. II.

SERJEANT *Chapple* moved that the *Venue* not to be changed
Venue might be changed from *Mid-* be changed
dlesex into *Lancashire*. *Cur'*, We ne- into a County
Palatine.
ver change the *Venue* into a County
Palatine.

Earby *against* Windus.

Hil. 5 Geo. II.

Foley.

MOTION to change the *Venue* *Venue* not to
from the County of *Middlesex* to be changed
the County of the City of *York*; but from a County
the Court said they would not change at large to a
the *Venue* from a County at large to a City, or Town
and County.
City, or Town and County; and the
Chief Justice said that the Court of *Ex-*
chequer had this Term refused to change
the *Venue* from a County to the Town
and County of *Southampton*.

Gallant *against* Squire.

Trin. 5 & 6 Geo. II.

MOTION to change the *Venue* *Venue* chan-
from the City of *Norwich* to ged from Nor-
the City of *London*; the Question was wich to Lon-
don.
whether the *Venue* might be changed
from one City and County to another
City

City and County. The Court said the *Venue* had been often changed into *London*, and the Chief Justice said that Lord *Raymond* had told him they did so in the *King's Bench*.

Stoneham against Denton.

Hil. 13 Geo. II.

Cooke.

Venue changed from *London* to *Middlesex*.

SERJEANT *Agar* moved that the *Venue* might be changed from *London* to *Middlesex*. Rule to shew Cause. Serj. *Skinner* for the Plaintiff. Rule absolute. The like, *Gibson v. Letchmere*, Hil. 3 Geo. 2. B. R.

Box against Reed and others.

Trin. 10 Geo. II.

Cooke.

Trespass against three Defendants, *Venue* changed on the Motion of two Defendants only.

TRESPASS against three Defendants; two of the Defendants had appeared by Attorney, and the Plaintiff appeared for the third Defendant. Serj. *Chapple* moved on the common Affidavit for the two Defendants who had appeared, that the *Venue* might be changed. Rule to shew Cause. Serjeant *Belfield* for the Plaintiff. The Question was, whether as two Defendants only moved, and the other did

Verdict.

431

not, the *Venue* ought to be changed, for Judgment might be sign'd against the third Defendant, and then the *Venue* would be fixed. *Cur'*, This seems to be a new Case; it is but reasonable that the *Venue* should be changed, if the Plaintiff cannot deny the Affidavit, the Defendant who does not apply to have the *Venue* changed, may have been made a Defendant merely to fix the *Venue* in a wrong County. Let the Rule be absolute.

Verdict.

Lord Gower *against* Heath.

Trin. 7 & 8 Geo. II.

Cooke.

ACTION of *Scandalum Magnatum*; the Words were *G--d d--mn* Verdict may be set aside for excessive Damages, but not for Smallness of Damages.
Lord Gower, he is a Rogue. Verdict for the Plaintiff, and only one Shilling Damages given. Serjeant *Darnal* moved that the Verdict might be set aside, and that the Plaintiff might be at Liberty to proceed to Trial *de novo*. Serjeant *Chapple* for the Defendant. *Cur'*, There have been many Instances of Verdicts being set aside for excessive Damages, but no Instance of a Verdict's being set aside for Smallness of Damages ;

ges; if there was we would set this aside. No Rule. Prothonotary allowed full Costs.

Willis an Attorney *against* Bennet,
Mich. 11 Geo. II.

No Motion
to set aside
a Verdict after
the first four
Days in Term.

MOTION on the 28th of *October* to set aside a Verdict; objected that no Motion should be received in Arrest of Judgment, or to set aside a Verdict after the first four Days in Term. *Cur'*, For the future no Motion shall be received in Arrest of Judgment, or to set aside a Verdict after the first four Days.

Wager of Law.

ON a Wager of Law, the Secondary having the Roll in his Hand, shall say. The Manner of waging Law.

A. B. [the Defendant] You owe *C. D.* [the Plaintiff] 40s. Why do you not pay him?

Def. I owe him nothing.

Secondary. Did you not buy, &c. as in the Declaration.

Def. No.

Secondary. Will you take your Oath of it?

Def. I will.

Then the Secondary must bid the Cryer call the Plaintiff, and bid the Defendant to lay his Hand upon the Book, and say after him, *viz.* *This* bear O ye Justices, that I owe not *C. D.* 40s. nor any Penny thereof, in Manner and Form as he hath declared against me. So help me God and the Contents of this Book.

If the Debt is 20*l.* or upwards, the Defendant shall bring his Compurgators to swear *de Credulitate*, &c.

Pasc. 3 *Car.* 2.

F f

If

Witness.

If the Defendant wage his Law *instant*, the Plaintiff can't be nonsuited, as it was resolved by the Court in a Case between *Jarret* and *Dix*; *aliter* where a Day is given by the Record.

Six Compurgators, and they are not to be sworn till the Plaintiff is called, and the Defendant has waged his Law.

Witness.

Gage against Gough.

Easter 7 Geo. II.

Register of the Ecclesiastical Court subpoena'd not obliged to produce a Will at the Trial, unless ordered by Rule of Court.

A *Subpœna ad testificandum* was served upon the Register of the Ecclesiastical Court, and Notice was given to him to bring a Will with him to the Trial; the Register attended, but did not bring the Will with him; and now Serjeant *Baynes* moved for an Attachment against the Register; but as there was no Rule upon the Register to produce the Will at the Trial, the Court would not grant an Attachment.

Stephenfon

Stephenfon *against* Brooke.

Trin. 13 & 14 Geo. II.

Borret.

Serjeant *Prime* moved for an At-
 tachment against *John Hall* of *Hull* Attachment against a Witness for not attending, denied.
 Shoemaker; because he did not attend
 as a Witness on the 14th of *November*,
 at *Guildhall*, tho' duly served with a
Subpœna for that Purpose. The Plain-
 tiff had offered him Five Guineas for
 his Trouble and Charges in coming to
London; *Hall* insisted on Ten Guineas.
 Rule to shew Cause. Serjeant *Draper*
 for *Hall* said, that *Hall* was Water-Bai-
 liff at *Hull*, and could not act by Deputy.
Cur', We shall never lay it down as a ge-
 neral Rule, that an Attachment shall
 go; for wilful Contempts and Acts in
 Defiance of Justice we might grant an
 Attachment; this Matter is reduced to
 a Fact, and the single Question before
 us is, whether Five Guineas was enough
 or Ten Guineas too much; Ten Gui-
 neas do not seem to be unreasonable.
 Discharge the Rule.

Writ.

Bennet *against* Sampson.
East. 7 Geo. II.

Cooke.

Capias ad respondendum
quashed, being
tested out of
Term.

THE Defendant was arrested by the Sheriffs of *London* by Virtue of a Writ of *Capias ad respondendum*. Serjeant *Urlin* moved that the Writ might be quashed, for that it was directed to the Sheriff (*in the singular Number*) and bore Teste the 13th of *February*, which was out of Term; the Serjeant alledged that the Defendant had no other Remedy, for he could not have *Oyer* of the Writ, neither would it appear upon Record, in Case a Writ of Error was brought. Rule to shew Cause. Serjeant *Chapple* for the Plaintiff. *Cur'*, The Rule must be made absolute, this Writ being tested out of Term is void.

The

The King *against* Harris.
East. 9 Geo. II.

Cooke.

AN Attachment for a Contempt was made, returnable the Day before the first Day of full Term. *Chapple* moved to quash the Writ, but was opposed by *Wright*, who said the Judges came to *Westminster* on the Effoin-Day, and there is no Adjournment over, and compared it to the Case of *Alsop* and *Bagot*, *antea* fo. 346. where it was held that Notice to the Defendant to appear on Service of Process must be for the Effoin-Day. 1 *Bulstrode* 35. 1 *Anderson* 240. 1 *Cro.* 102. 1 *Sid.* Adjourned. The Writ was afterwards quashed.

Attachment
returnable the
Day before
the first Day
of full Term.

Williams against Faulkner,
Trin. 10 Geo. II.

Borret.

Serjeant *Skinner* moved, that the Writ of *Capias ad respondendum* might be quashed, because there were not fifteen Days between the Teste and Return of the Writ. Rule to shew Cause. Serj. *Chapple* for the Plaintiff. *Cur'*, This is Error and not Irregularity; let the Rule be discharged.

The Want of
15 Days be-
tween the
Teste and
Return of the
Capias, is Er-
ror, and not
Irregularity.

Wafs *against* Cornet.

Hil. 11 Geo. II.

Cooke.

Want of 15
Days between
Teste and Re-
turn of Capias.

SERJEANT *Draper* moved that Pro-
ceedings might be stayed, because
there were not Fifteen Days between
the Teste and Return of the *Capias*,
it being tested the 24th of *January*,
and returnable the 28th of *January*,
no Appearance had been enter'd by the
Defendant, or by the Plaintiff for him.
Cur' Advisar'. Serjeant *Wright* for the
Plaintiff; but before the Court gave any
Opinion, *Wright* moved that the Writ
might be quashed in Order to have the
Benefit of the next Term.

Hayward an Attorney *against* Den-
nison. Mich. 11 Geo. II.

Thomson.

Attachment
of Privilege
should have
15 Days be-
tween the
Teste and the
Return.

SERJEANT *Bootle* for the Defendant mo-
ved to stay Proceedings, because
there were not 15 Days between the
Teste and Return of the Attachment of
Privilege, and said it was in the Nature
of an Original, and therefore should
have 15 Days between the Teste and
Return.

Serj. Parker for the Plaintiff. It is a
Writ returnable at a Day certain, and
need

need not have 5 Days between the Teste and Return, but may be returnable *de die in diem*. Adjourn'd. *Postea* made absolute.

Elms *against* Thomlinson an Attorney. Mich. 8 Geo. II.

Thomson.

BILL filed against an Attorney. Judgment by *Nil dicit*, Writ of Inquiry executed, returnable on a general Return, and not on a Day certain. Serjeant *Boote* moved, before final Judgment, that the Inquiry might be set aside, Rule to shew Cause. Serj. *Draper* for the Plaintiff said it was Error, and not Irregularity, and even in Error it was cured by the Statutes of Jeofail, which extend to Judgments by *Nil dicit*. *Cur.* It is Error, and not Irregularity. Discharge the Rule.

Walker *against* Harris an Attorney.

Mich. 14 Geo. II.

Borret.

Serjeant *Willes* moved that the Execution in this Cause might be set aside, it being returnable on a general Return, whereas it should have been returnable on a Day certain. Rule to

F f 4

shew

shew Cause. Serjeant *Birch* for the Plaintiff. *Cur'*, This being an Execution, no Advantage can be taken of it upon a Writ of Error, and is plainly distinguishable from *Elmes* and *Thomlinson*, which Case was upon a Writ of Inquiry; therefore let a *Superfedeas* issue, and by Consent, on the Plaintiff's paying Costs, the Defendant shall bring no Action.

Cockayn against Baker.

Hil. 5 Geo. II.

No Attorney's
Name to the
Copy of the
Writ.

MOTION to stay Proceedings, because the Copy of the Writ with which the Defendant was served, had no Attorney's Name to it.

Fawkes an Attorney against Jay.

Trin. 5 & 6 Geo. II.

Thomson.

No Attorney's
Name to the
Writ, Pro-
ceedings not
stayed.

MOTION to set aside Proceedings on the Bail-Bond, and to stay Proceedings in the original Action, because the Plaintiff an Attorney had not wrote his Name in a plain legible Hand on the Attachment of Privilege. Rule to shew Cause. *Postea* discharged with Costs. *Skinner* for the Plaintiff; *Hussey* for the Defendant.
Blackhall

Blackhall *against* Gould.

Trin. 7 & 8 Geo. II.

SERJEANT *Comyns* moved to stay Proceedings, because the Attorney's Name was not put to the Writ, pursuant to the Statute 2 Geo. 2. *Cur'*, The Act of Parliament does not make the Process void, for not putting the Attorney's Name to it, and tho' the Attorney may be punished for not setting his Name to the Writ, yet the Party must not suffer; and so it was determined in this Court. *Trin. 5 Geo. 2. Warner and Revel.* Denied to stay Proceedings.

No Attorney's
Name to the
Writ, Process
not void.

Lagget *against* Watkins.

Hil. 12 Geo. II.

Borret.

SERJEANT *Hussey* moved that the Proceedings might be set aside, because there was no Attorney's Name to the Warrant. Rule to shew Cause. *Skinner* for the Plaintiff. *Cur'*, The Warrant is not void, the Sheriff is blameable, but the Plaintiff ought not to suffer. Discharge the Rule.

No Attorney's
Name to the
Warrant, not
void.

Grice

Writ of Inquiry.

Grice *against* Allen.

East. 14 Geo. II.

Thomson.

Attorney's
Name to the
Writ, tho' not
to the War-
rant sufficient.

SERJEANT *Draper* moved that Proceedings might be stayed, the Attorney's Name not being to the Warrant made by the Sheriff, though it was to the Writ on which the Warrant was made. Rule to shew Cause. Serjeant *Urlin* for the Plaintiff. *Cur'*, (*Fortescue A.* absent) Said that as the Attorney's Name was to the Writ, it was sufficient, but that till the *Stat. 12 Geo. 2.* the not inserting the Name of the Attorney in the Warrant was bad, and thought some former Determinations on this Head, not declaring the Process void, were quite wrong.

Writ of Inquiry.

Higgins *against* Steward.

Hil. 4 Geo. II.

Foley.

Notice of executing a Writ of Inquiry given to the Defendant when his Attorney is known, is bad.

HELD *per totam Curiam*, that Notice of Trial, or of executing a Writ of Inquiry, given to the Defendant when his Attorney is known, is not good Notice; but that when the Defendant's

Defendant's Attorney is not known, Notice of Trial, or of executing a Writ of Inquiry, may be given to the Defendant himself.

Kingdom *against* Hern and Frost.

Mich. 7 Geo. II.

Cooke.

Serjeant *Wright* moved that the Writ of Inquiry executed in this Cause might be set aside, for that the Action was joint, and Notice of executing the Writ of Inquiry was only given to one Defendant. Serjeant *Glyde* for the Plaintiff. *Cur'*, Notice ought to have been given to both Defendants.

Long *against* Lingwood.

Hil. 8 Geo. II.

Cooke.

Determined by the Court, that upon an Issue of *Nul tiel Record*, Notice of executing a Writ of Inquiry may be given upon the Issue-Book, as well as upon a Joinder in Demurrer. *Eyre* for the Plaintiff; *Wright* for the Defendant.

Paul against Gledhil.

Hil. 7 Geo. II.

Thomson.

A Term's Notice of executing a Writ of Inquiry, where no Proceeding for a Year after Judgment.

ADjudged by the Court upon Consideration, that if there has been no Proceeding for a Twelvemonth after Judgment, there must be a Term's Notice given of executing a Writ of Inquiry. *See the Rule of East. 13 Geo. 2.*

Butler against Johnson.

Hil. 11 Geo. II.

Short Notice of executing a Writ of Inquiry, should be at least two Days Notice.

THE Defendant had procured a Judge's Order for Time to plead, pleading an issuable Plea, taking short Notice of Trial in Case he pleaded, and the like, of executing a Writ of Inquiry in Case he should not plead; the Time for pleading expired on the 5th of *February*, when the Plaintiff sign'd Judgment for Want of a Plea, and on the 7th of *February* gave Notice of executing a Writ of Inquiry on the 8th of *February*. Serjeant *Wright* moved that the Writ of Inquiry might be set aside for insufficient Notice; the Plaintiff might and ought to have given Notice sooner. Rule to shew Cause. Serj. *Skinner* for the Plaintiff. *Cur'*, The Plaintiff

Plaintiff might have given Notice on the 6th of *February*; where the Plaintiff may give short Notice of Trial, or of executing a Writ of Inquiry, he should give at least two Days Notice, the same as is sufficient in Countermands of Notice; let the Writ of Inquiry be set aside with Costs.

Foster against Smales.

East. 7 Geo. II.

Thomson.

Serjeant *Umlin* moved that the Writ of Inquiry executed in this Cause might be set aside for Incertainty in the Notice. The Notice was, that the Writ would be executed between the Hours of Ten and Two. *Cur'*, That is too incertain; take a Rule to shew Cause.

Notice of Inquiry between the Hours of Ten and Two incertain.

Robinson against Philips.

Trin. 7 & 8 Geo. II.

Borret.

A Question arose (*inter alia*) whether Notice of executing a Writ of Inquiry between the Hours of Eleven and Two was good Notice. *Cur'*, We have held it that the Notice must be confined within the Compass of two

Notice of Inquiry to be confined to two Hours.

Writ of Inquiry.

two Hours at most, and therefore this Notice is irregular. Rule to shew Cause. *Skinner* for the Plaintiff; *Eyre* for the Defendant.

Last against Denny.

Mich. 10 Geo. II.

Thomson.

Notice of executing an Inquiry at 11 o' Clock good, if executed before 12.

Serjeant *Skinner* moved that the Writ of Inquiry executed in this Cause might be set aside for Irregularity in the Notice, which was that the Writ of Inquiry would be executed at Eleven o' Clock, without mentioning any other Hour. Rule to shew Cause. *Prime* for the Plaintiff produced an Affidavit that the Writ was executed before 12 o' Clock. *Cur'*, The Notice is regular. Discharge the Rule.

Squire against Almond.

Hil. 8 Geo. II.

Cooke.

Notice of Inquiry uncertain, as to Time and Place.

MOTION to set aside a Writ of Inquiry for Incertainty in the Notice, both as to Time and Place.
1. The Notice was that the Writ of Inquiry would be executed between the Hours of ten and two, whereas it should have been confined to two Hours at most.

2. The Notice was that the Writ would be executed at the Sheriff's Office in *Northampton*, it should have been at such a Place in *Northampton*. The Court held the Notice insufficient on both Points, and set aside the Writ of Inquiry.

Kinch *against* Haime.

Mich. 9 Geo. II.

Thomson.

SERJEANT *Belfield* moved that the Writ of Inquiry executed in this Cause might be set aside; the Notice was, that the Writ of Inquiry would be executed at *Westminster*, the Words *Court-House* and *Hall* being omitted. Rule to shew Cause. *Urlin* for the Plaintiff. *Cur'*, The Notice is uncertain without these Words; the Writ of Inquiry must be set aside.

Notice of executing an Inquiry at Westminster, bad.

Lemark *against* Newman.

Trin. 10 Geo. II.

Cooke.

SERJEANT *Wright* moved to set aside a Writ of Inquiry for the Uncertainty of the Notice; the Notice was that the Writ of Inquiry would be executed at the Three Tons in *Brook-street, Middlesex*, and he produced an Affidavit that

Notice of executing a Writ of Inquiry at the Three Tons in Brook-street, Middlesex, uncertain, Writ of Inquiry set aside.

Writ of Inquiry.

that there were three *Brook-streets* in *Middlesex*. Serjeant *Eyre* on the other Side insisted that the Sheriff of *Middlesex* constantly executed Writs of Inquiry in *Brook-street, Holborn*, where this was executed; and that although there were three *Brook-streets* in *Middlesex*, there was the Sign of the Three Tons only in *Brook-street, Holborn*; and therefore the Defendant should have gone to make his Defence to that *Brook-street* where the Three Tons were. *Cur'* unanimous, this Notice was too incertain, for he should have said where *Brook-street* was, and the Defendant was not obliged to go to all the *Brook-streets* to find out where the Three Tons were, and so set aside the Writ of Inquiry.

Zouch *against* Bell.

Hil. 6 Geo. II.

Thomson.

Costs for not
executing a
Writ of Inqui-
ry according
to Notice, de-
nied.

MOTION for Costs for not executing a Writ of Inquiry according to Notice denied, and said it was never known to be done. *But see the Rule of Trin. 13 Geo. 2. the Practice altered.*

Stainton *against* Winch.

Hil. 6 Geo. II.

Thomson.

THE Plaintiff moved for Leave to execute a new Writ of Inquiry ; a Writ of Inquiry had issued, returnable *Tres Trin.* and was executed on the *Monday*. The Defendant had brought a Writ of Error, but had not got it allowed. *Cur'*, Let the Plaintiff be at Liberty to execute a new Writ on Payment of Costs. *Comyns* for the Plaintiff ; *Glyde* for the Defendant.

Suttle *against* Layson.

Mich. 7 Geo. II.

Cooke.

Serjeant *Eyre* for the Plaintiff moved to quash a Writ of Inquiry without paying Costs ; the Writ was returnable on a *Sunday*, and by Mistake executed on the *Monday*. Serjeant *Baynes* for the Defendant opposed the setting aside the Writ without Costs, and said the Defendant had made a Defence at the Execution of the Writ of Inquiry by Counsel ; and had thereby been put to Costs, the Court held that the Plaintiff should pay Costs.

Writ of Inquiry quashed on the Plaintiff's Motion, he shall pay Costs, the Defendant having made a Defence.

G g

Maddox

Writ of Inquiry.

Maddox *against* Jones.

Mich. 7 Geo. II.

Thomson.

Inquiry set
aside, because
the Plaintiff
was examined
as a Witness.

SERJEANT *Skinner* moved that the Writ of Inquiry executed in this Cause might be set aside, because the Plaintiff was admitted to be a Witness and was the only Witness examined. Serjeant *Birch*, the Plaintiff is an Administratrix, and was admitted to be a Witness; the Defendant's Attorney attended the Execution of the Writ of Inquiry, and desired us to stay Proceedings, and to give him a Bill of Costs, and said the Debt and Costs should be paid. Some Damages ought to be given. *Cur'*, The Under-Sheriff ought to pay the Costs; but that was not pressed, the Inquiry was set aside.

Burgefs *against* Nightingale.

Mich. 10 Geo. II.

Thomson.

Inquiry not to
be set aside for
Smallness of
Damages.

SERJEANT *Prime* for the Plaintiff moved to set aside a Writ of Inquiry for Smallness of Damages; the Court refused to make a Rule to shew Cause.

Dixon

Dixon *against* Goodman and others.

Mich. 14 Geo. II.

Thomson.

SERJEANT *Umlin* moved that the Writ of Inquiry executed in this Cause might be set aside, because the Writ being directed to the Coroners of *Norwich*, was executed by one *Hewan*, who was not one of the Coroners, and had no Deputation from the Coroners. Rule to shew Cause. Serj. *Prime* for the Plaintiff, *Hewan* is Clerk to the Coroners and their known Deputy; the Defendant cross-examined the Plaintiff's Witnesses. The Court discharged the Rule because the Defendant had made a Defence, but seemed inclinable to have made the Rule absolute, for Want of a proper Authority in *Hewan*.

Dixon against Goodman and others.
March 14 Geo. II.

Thompson

Coroner's Inquest moved that the Writ
of Inquiry extended in this Cause
might be returned because the Writ is
not directed to the Coroners of New
York, was executed by one Arthur
who was not one of the Coroners, and
had no Relation from the Coroners,
hence to New Castle. Sir Robert for
the Plaintiff, moves for the Cor-
oners and their Deputy, the De-
fendant cross-examined the Plaintiff's
Witnesses. The Court charged the
Jury because the Defendant had made
a Defence, but seemed inclined to have
made the Jury believe, for Want of a
proper Authority in Arthur.

Coroner's Inquest

March 14 Geo. II.

Thompson

Coroner's Inquest moved that the Writ
of Inquiry extended in this Cause
might be returned because the Writ is
not directed to the Coroners of New
York, was executed by one Arthur
who was not one of the Coroners, and
had no Relation from the Coroners,
hence to New Castle. Sir Robert for
the Plaintiff, moves for the Cor-
oners and their Deputy, the De-
fendant cross-examined the Plaintiff's
Witnesses. The Court charged the
Jury because the Defendant had made
a Defence, but seemed inclined to have
made the Jury believe, for Want of a
proper Authority in Arthur.

Dixon

A Table of the general Heads contained in the following INDEX.

1. **A** Batement.
2. Account.
3. Acetiam.
4. Añion.
5. Añions real.
6. Addition.
7. Administrator.
8. Affidavit.
9. Affirmation.
10. Agent.
11. Alias dñ.
12. Ambassadors.
13. Amendment.
14. Antient Demesne.
15. Appearance.
16. Arbitration.
17. Arrest.
18. Arrest of Judgment.
19. Attachment.
20. Attorney.
21. Award.
22. Bail.
- G g̃3

A Table of the general Heads

22. Bail.
23. Bail-Bond.
24. Baron and Feme.
25. Bill.
26. Breach.
27. Capias ad respondendum.
28. Capias ad Satisfaciendum.
29. Capias in Withernam.
30. Cassetur breve.
31. Certiorari.
32. Commission.
33. Commitment.
34. Composition.
35. Condition.
36. Conusance.
37. Costs.
38. Countermand.
39. County Palatine.
40. Criminal Conversation.
41. Damages.
42. Declaration.
43. Demurrer.
44. Discontinuance.
45. Dower.
46. Ejectment.
47. Error.
48. Escape.
49. Essoin.
50. Evi.

contained in the following Index.

50. Evidence.
51. Exception.
52. Execution.
53. Executors.
54. Fieri Facias.
55. Fine.
56. Habeas Corpora.
57. Habeas Corpus.
58. Heir.
59. Homine replegiando.
60. Hundred.
61. Imparlance.
62. Infant.
63. Informer.
64. Inquiry.
65. Interest.
66. Interrogatories.
67. Irregularities.
68. Issue.
69. Judgment.
70. Jurata.
71. Jurisdiction.
72. Jury.
73. Justification.
74. Memorandum.
75. Misnomer.
76. Money, &c. into Court.

A Table of the general Heads

- 77. Motions.
- 78. Mutual Debts.
- 79. Ne recipiatur.
- 80. Non Pros'.
- 81. Notice.
- 82. Nul tiel record.
- 83. Order.
- 84. Original.
- 85. Outlawry.
- 86. Oyer.
- 87. Papists.
- 88. Parcatur.
- 89. Pauper.
- 90. Plea.
- 91. Double Pleas.
- 92. Pleadings.
- 93. Pledges.
- 94. Postea.
- 95. Prisoners.
- 96. Privilege.
- 97. Process.
- 98. Prochein amy.
- 99. Prohibition.
- 100. Promissory Notes.
- 101. Proviso.
- 102. Quakers.
- 103. Quare impedit.
- 104. Recog.

contained in the following Index.

- 104. Recognizance.
- 105. Recordari facias loquelam.
- 106. Recoveries.
- 107. Reference.
- 108. Rent.
- 109. Repleader.
- 110. Replevin.
- 111. Rescue.
- 112. Return Habend'.

- 113. Scandalum Magnatum.
- 114. Scire facias.
- 115. Scire fieri Inquiry.
- 116. Serjeants.
- 117. Second Deliberance.
- 118. Sheriffs.
- 119. Slander.
- 120. Soldiers.
- 121. Summons.
- 122. Supersedeas.
- 123. Surrender.

- 124. Tender.
- 125. Testatum Capias.
- 126. Time.
- 127. Trespals.
- 128. Trial.
- 129. Trover.

- 130. Variance.
- 131. Venire facias.
- 132. Venue.

A Table of the general, &c.

- 132. Venue.
- 133. Verdict.
- 134. Wager of Law.
- 135. Wails.
- 136. Warrant of Attorney.
- 137. Withernam.
- 138. Witness.
- 139. Writ.
- 140. Writ of Inquiry.

THE

THE
INDEX:
OR, A
TABLE
OF
The Principal Matters.

Abatement. Page 1 to 9.

1. **P**LEA in Abatement not amendable. 21
2. Plea which ought to have had an Affidavit annexed, delivered without, Judgment signed, and held to be regular. 282
3. Defendant must plead in Abatement within four Days after Declaration, delivered or Notice of it given. 286

Account. p. 9, 10.

Acetiam. p. 11.

Action. p. 11.

Actions

The INDEX: Or,

Actions Real.

A peremptory Rule to plead must be given in real Actions. *Page 290*

Addition.

The Want of Addition pleaded in Abatement without an Affidavit. *5*

Administrator.

1. Administrator nonsuited upon Trial in Trover, the Possession, Loss and Trover in the Time of the Intestate, the Conversion in his own Time, he shall pay Costs. *115*
2. Costs payable by Rule of Court to the Defendant, ordered to be paid to his Administratrix. *118*
3. Administrator nonsuited in Prohibition brought by himself, held that he should not pay Costs. *118*
4. Declaration by an Administrator in the *debet* and *detinet*. *140, 141*
5. On Discontinuance the Plaintiff must pay Costs, though he be an Administrator. *157*
6. Leave to plead *Plene Administravit* after regular Judgment set aside. *234, 236*
7. Judgment against an Administratrix set aside on Payment of Costs only, tho' Inquiry executed. *234*
affidavit.

A Table of the Principal Matters.

Affidavit. p. 12, 13.

1. Plea in Abatement without an Affidavit, Judgment signed. *Page* 4, 282
2. Plea of Infancy set aside for Want of an Affidavit. 5
3. The Want of Addition pleaded in Abatement, without an Affidavit. 5
4. Affidavits of the Truth of a Plea in Abatement, made by the Defendants Attorney held sufficient. 6
5. Affidavit of a Debt made by a Person convicted of Felony, not sufficient to hold to Bail, nor to be supplied by a subsequent Affidavit. 49
6. Bail put in before a Judge cannot justify by Affidavit. 81
7. Affidavit of Service of a Declaration in Ejectment, bad for Incertainty. 165, 166
8. What Affidavit necessary on Motion for Judgment in Ejectment on the late Act. 168
9. Affidavit of the Want of a material Witness, for putting off a Trial should be made by the Defendant. 401
10. Affidavit for changing the Venue wrong. 421, 422

Affirmation.

Affirmation of a Quaker, not sufficient to ground an Attachment. 34

Agent.

The INDEX: Or,

Agent.

1. Attorney answerable for his Agent.

Page 41

2. Declaration must be demanded of the Agent in Town.

124, 281

3. Oyer given to a Defendant when demanded by his Agent bad.

275

4. If no Agent in Town, Plea, &c. must be demanded of the Attorney in the Country.

280

5. Plea, though with Notice to set off, must be delivered to the Agent in Town.

281

Alias dict'.

1. *Alias dict'* ought not to be in *Latin*, if so in the Bond.

322

2. *Alias dict'* not necessary.

ibid.

3. Variance in the *Alias dict'*, after *Non est factum* pleaded, whether material.

413

Ambassador. p. 14.

Amendment. p. 15 to 26.

1. Leave to amend a Fine denied, the Affidavit being made before the Attorney who made the Application.

13

2. Precipe, Writ of Entry, &c. in a Recovery amended, by adding the Names of several Parishes.

371

A Table of the Principal Matters.

Antient Demesne.

1. Not to be pleaded without Leave of the Court, and an Affidavit that the Lands are Antient Demesne. *Page 2*
2. Must be pleaded within the first four Days of the Term. *ibid.*
3. Judgment in a Writ of Deceit, for suffering a Recovery of Lands in Antient Demesne. 373, 374

Appearance. p. 26 to 33.

1. After the Time for Appearance is out, a Declaration cannot be delivered till the Appearance is entered. 145, 146, 148
2. No Appearance to the Exigent necessary on suing out a Superfedeas. 274

Arbitration. See Award.

Arrest.

1. An Attorney arrested on an Attachment, whilst attending his Client's Business in *Westminster Hall*, discharged. 40
2. An Attorney returning from an Attendance on the Prothonotary arrested on a *Ca. Sa.* out of *B. R.* 40
3. An Attorney arrested in a *Ca. Sa.* whilst attending the Execution of a Writ of Inquiry discharged. 41

Defen-

The INDEX: Or,

4. Defendant arrested after Bail put in,
discharged. Page 50
5. ——— *Aliter.* 51
6. Defendant arrested as returning from
an Attendance in Court, discharged.
341

Arrest of Judgment.

1. Misnomer must be pleaded in Abate-
ment, and cannot be taken Advan-
tage of in Arrest of Judgment. 7
2. No new Trial after Motion in Arrest
of Judgment. 241
3. Motion for a New Trial after Motion
in Arrest of Judgment. 409

Attachment. p. 34.

1. An Attachment granted against an
Attorney for practising after he was
forejudged. 42
2. Discharged in Payment of Costs. *ibid.*
3. An Attachment granted against the
Defendant's Attorney, for giving Plain-
tiff Notice that the Defendant had
surrendered in Discharge of his Bail
when he had not. 43
4. No Attachment for Non-Performance
of a Parol Award. 44
5. Attachment for Non-Performance of
a Parol Award. *ibid.*
6. Sheriff cannot take Bail on an Attach-
ment. 53, 54, 325
7. Motion 2

Table of the Principal Matters.

7. Motion for an Attachment on the last Day of a Term *Page* 104
8. Attachment against Sheriff for not bringing up a Prisoner pursuant to a *Habeas Corpus* on Tender of *1 s. per Mile*. 219
9. Prisoner in Custody on an Attachment cannot be charged with a Declaration or Execution without Leave of the Court. 325
10. Prisoner on an Attachment for a Contempt not intitled to a Day Rule. 326
11. Attachment against one who acts as Under-Sheriff for not returning a Writ. 381
12. Attachment against a *Welsh* Sheriff for not returning a Writ. *ibid.*
13. Attachment against a Witness for not attending, denied. 435
14. Attachment returnable the Day before the first Day of full Term. 437
15. Attachment of Privilege should have 15 Days between the *Teste* and Return. 438

Attorney. p. 34 to 44.

1. An Attorney forejudged sued by Bill, pleads in Abatement that he is no Attorney. 8
2. An Attorney pleads Infancy, the Court refused to set the Plea aside. 9

H h

3. Affidavit

The INDEX: *Or,*

3. Affidavit of Debt, in Order to hold to Bail made before Plaintiff's Attorney. *Page* 12
4. Leave to amend a Fine denied, the Affidavit being taken by the Attorney who made the Application 13
5. Attorney undertaking to appear can't take Advantage of the Want of Appearance. 28
6. An Attorney, if he undertakes to file Bail must do it, tho' there be no Affidavit of the Debt. 50
7. Conusance not to be allowed against the Privilege of an Attorney. 97, 99
8. Declaration must be demanded of the Agent in Town. 124, 281
9. If the Defendant's Attorney cannot be found, Copy of the Declaration must be left in the Office, but Notice of Trial or Inquiry must be given to the Defendant himself, or left at his House, and not left in the Office. 126, 276, 396, 442
10. Method to inquire after the Attorney as expected by the Court. 276
11. Declaration delivered to the Defendant, his Attorney being known, is bad. 126
12. Action against an Attorney for appearing and pleading in Ejectment without Authority. 177

13. Attor:

Table of the Principal Matters.

13. Attorney delaying to sign Judgment till the Writ of Error was spent, ordered to sue out a new one at his own Expence. *Page* 192
14. Attorney not to be Bail. 211
15. If no Agent in Town, Plea, &c. must be demanded of the Attorney in the Country. 280
16. Plea, tho' with Notice to set off, must be delivered to the Agent in Town. 281
17. Attorney's Clerk giving Time to plead, Attorney bound by it. 293
18. Attorney not to determine that a Plea is ill and sign Judgment. 297
19. Plea by an Attorney of another Court a Nullity. 307
20. Venue not to be changed when an Attorney is Plaintiff, tho' in Action of Assault and Battery. 418
21. Venue may be changed from *Middlesex*, when an Attorney is Plaintiff, if he sues by *Capias*. 419
22. An Attorney when Defendant has no Privilege as to the Venue. *ibid.*
23. No Attorney's Name to the Copy of the Writ. 440
24. No Attorney's Name to the Writ, Proceedings not stayed. *ibid.*
25. Process not void. 441
26. No Attorney's Name to the Warrant, not void. *ibid.*

The INDEX: Or,

27. Attorney's Name to the Writ tho'
not to the Warrant, sufficient. *Page* 442
Award. p. 44 to 48.

B

Bail. p. 49 to 90.

1. **B**AIL in an Action of Account. 9
2. *Acetiam* in Debt against Bail. 11
3. Affidavit of Debt to hold to Bail made
before the Plaintiff's Attorney. 12
4. Bail-Piece amended. 15
5. Breach in a Declaration on a Recogn-
izance of Bail ill assigned. 19
6. Bail cannot surrender the Principal
after the Appearance Day of the Re-
turn of the Writ, when an Action is
brought upon the Recognizance. 20
7. An Attorney not intitled to Bail, no
Bill being delivered until after Arrest. 35
8. Error on a Judgment after Verdict for
the Defendant in Ejectment, no Bail
necessary. 178
9. Bail in Error by an Heir at Law after
Judgment by *Nil dicit*. 179
10. In Error on Ejectment the Plaintiff
in Error may give Bail, and need not
himself enter into the Recognizance. 179, 180
11. Attorney not to be Bail. 211
12. Bail in *Homine replegiando*. 222, 224
13. Sheriff

Table of the Principal Matters.

13. Sheriff can't take Bail to an Attachment. Page 325
 14. Rescuers admitted to Bail. 375

Bail-Bond.

1. Bail-Bond to be taken in double the Sum sworn to. 67
2. Bail-Bond may be sued by the Executors of the Assignee. 68
3. Plaintiff may take an Assignment of the Bail-Bond and proceed thereon, tho' he excepted to the same Bail when put in above. *ibid.*
4. Bail-Bond in a Country Cause not to be put in Suit till eight Days exclusive of the Appearance are expired. 69
5. Terms of staying Proceedings on the Bail-Bond. 70
6. Proceedings on the Bail-Bond stayed on Payment of Costs, tho' the Plaintiff had been delayed of a Trial. 71

Baron and Feme. p. 91.

1. In an Action against Baron and Feme, if the Wife only be arrested, she shall be discharged on a common Appearance; *aliter*, if both arrested. 65
2. Feme Covert taken in Execution not to be discharged. 66
3. On a Judgment against Baron and Feme, Wife taken in Execution not to be discharged. 208

H h 3

4. Both

The INDEX: Or,

4. Both taken in Execution, Wife not to be discharged. Page 209
5. Bail by Baron and Feme on a *Capias* in *Witherman*. 224
6. Baron and Feme Prisoners allowed 2s. 4d. per Week each. 337
7. Process against Baron and Feme, Husband only served. 351
8. No Occasion to serve the Wife with Process. *ibid.*

Bill.

1. An Attorney not suable as Executor by Bill. 34
2. Serjeants at Law suable by Original and not by Bill. 380

Breach.

- Breach in a Declaration on a Recognizance of Bail ill assigned. 19

C

Capias ad respondendum.

1. **C**APIAS *ad respondendum* quashed, being tested out of Term. 436
2. The Want of 15 Days between the *Teste* and Return of the *Capias* is Error, and not Irregularity. 437, 438

Capias

Table of the Principal Matters.

Capias ad Satisfaciendum.

1. *Ca. Sa.* executed, amended. Page 25
2. *Ca. Sa.* lodged after Error brought, irregular 198

Capias in Withernam.

See *Homine replegiando*.

Cassetur breve.

1. On a Plea in Abatement, the Plaintiff may confess the Plea, and enter a *Cassetur breve*, without applying to the Court or paying Costs. 6
2. *Scire facias* may be quashed before Plea without Costs. 378

Certiorari.

On *Certiorari* the Plaintiff not bound to the Cause of Action below, may declare as he pleases. 221

Commission.

Commission for the Examination of a Plaintiff in a *Quare Impedit* touching Secret Trusts for *Papists*. 362

Commitment. p. 92.

Composition.

See Informer,

226

H h 4

Con:

The INDEX: Or,

Condition.

1. Condition of Recognizance in Account. Page 9
2. Condition of Recognizance in *Hominie replegiando*. 222

Conusance. p. 92 to 99.

Costs. p. 100 to 120.

1. The Plaintiff shall pay no Costs on confessing a Plea in Abatement. 6, 7
2. An Attorney allowed Costs of Taxation. 36
3. Arbitrators by Rule of Court may Award Costs subsequent to the Submission, Arbitrators by Bond cannot. 45
4. On Discontinuance, the Plaintiff shall pay Costs tho' he be an Administrator. 157
5. How the Defendant is to recover his Costs in Ejectment. 171
6. Of demanding Costs of the Lessor of the Plaintiff. 172
7. Remedy for Costs, when the Plaintiff is nonsuited for not confessing Lease Entry and Ouster, is on the Rule by Consent. *ibid.*
8. Proceedings in Ejectment stayed till Costs of a former Ejectment paid. 174

9. But

Table of the Principal Matters.

9. But not when the Lessor is in Custody for those Costs. Page 175
10. On a Nonsuit at Trial in a *Homine replegiando*, the Defendant shall have Costs. 223
11. If on setting off à mutual Debt a Ballance be found for the Defendant, he shall have his Costs. 265
12. Defendant taken on a *Capias Uilegatum* and reversing the Outlawry, shall pay Costs to the Exigent, the subsequent Costs to attend the Event. 270
13. But must pay full Costs, if Levy made or Outlawry certified into the Exchequer, *ibid.*
14. How the Defendant shall recover his Costs if the Plaintiff does not declare after Reversal of the Outlawry. 271
15. Costs allowed against a Defendant, who had been admitted to defend *in forma pauperis*. 279
16. No Costs on a Repleader. 374
17. *Scire facias* may be quashed before Plea without Costs. 378, 379
18. Prothonotary may tax Costs for not going to Trial at Discretion. 404
19. Both Plaintiff and Defendant give Notice of Trial, neither proceed to Trial, both intitled to Costs. 405

20. Defen-

The INDEX: Or,

20. Defendant a *Pauper* obliged to pay Costs for not proceeding to Trial pursuant to Notice by Proviso. *Page* 405
21. Defendant giving a second Notice of Trial by Proviso, Proceedings stayed, till Costs paid for not proceeding to Trial pursuant to the first Notice. 406
22. Costs for not going on to Trial pursuant to Notice, tho' the Defendant had entered a *Ne recipiatur*. *ibid.*
23. No new Trial without Costs. 408
24. Costs for not executing a Writ of Inquiry pursuant to Notice. 448
25. Writ of Inquiry quashed on the Plaintiff's Motion, he shall pay Costs when the Defendant has made a Defence. 449

Countermand.

1. Notice of Trial may be countermanded, though the Record be made a *Remanet*. 393
2. Countermand of Notice of Trial may be given in the Country two Days before the Commission-Day. 393
3. Notice of Trial countermanded, and continued in the same Notice, bad, and Verdict set aside. 394
4. Notice of Trial for the *Monday* countermanded on the *Saturday* good. 395

County

Table of the Principal Matters.

County Palatine.

1. On a *Testatum* into *Durham* the Defendant must be served with a Copy of the Bishop's Mandate to the Sheriff. Page 343
2. Must be served with the Process out of the Superior Court. 344
3. Venue arising in a County Palatine; Rule to shew Cause why it should not be laid in an adjacent County. 428
4. Venue not to be changed into a County Palatine. 429

Criminal Conversation.

Trial at Bar in an Action for Criminal Conversation. 411

D

Damages.

1. **V**erdict may be set out for excessive Damages, but not for Smallness of Damages. 431
2. Inquiry not to be set aside for Smallness of Damages. 450

Declaration. p. 121 to 152.

1. Declaration in Ejectment amended. 16
2. Amendment of Declaration by adding new Counts after Issue joined, denied. 16
3. Amend-

The INDEX: Or,

3. Amendment of Declaration in Ejectment by altering the Day of the Demise after Issue joined, denied. *Page*
16
4. Declaration amended after Issue joined, and Verdict set aside. 17
5. When the Plaintiff amends his Declaration and pays Costs, the Defendant shall not have an Imparlance. 18
6. Declaration amended by adding new Counts in the second Term. *ibid.*
7. Amendment of a Declaration tending to a new Cause of Action, prayed after Notice of Trial, denied. 19
8. Declaration amended after Argument on Demurrer, & *Uterius Consilium* ordered. *ibid.*
9. Breach in a Declaration on a Recognizance of Bail ill assigned. *ibid.*
10. Declaration amended by altering the Venue after Issue joined. 20
11. Appearance by the Plaintiff for the Defendant must be before Declaration delivered. 31
12. In the Memorandum of a Declaration against an Attorney, the Nature of the Action need not be set forth. 35
13. Declaration in Ejectment intituled *Trin. 4 Geo. 2.* instead of 3 and 4. not material. 162

14. Decla-

Table of the Principal Matters.

14. Declaration in Ejectment of *Trinity* Term, with Notice to appear in *Hilary* Term. Page 163
15. Declaration in Ejectment of *Michaelmas* Term, delivered before the *Essoin* Day of *Hilary* Term, and Demise laid on the first Day of *January*. 164
16. Service of Declaration in Ejectment. 165, 166, 167, 168
17. On *Habeas Corpus* or *Certiorari*, the Plaintiff is not tied to the Cause of Action below, may declare as he pleases. 221
18. Plaintiff can't be non-pros'd for not declaring after Outlawry reversed. 271
19. Pledges may be added to a Declaration at any Time before Judgment. 323
20. Prisoner in Custody on an Attachment can't be charged with a Declaration or Execution without Leave. 325
21. Prisoner surrendering as a Fugitive, not to be charged with a Declaration. 326
22. Time to declare against a Prisoner denied. 327
23. Declaration against a Prisoner on the 5th Day after Term. 328
24. After an irregular Declaration against a Prisoner, cannot declare *de novo* unless, &c. *ibid.*
25. Pri-

The INDEX: Or,

25. Prisoner irregularly charged with a Declaration, should complain before Judgment. Page 329
26. Declaration against a Prisoner in a Country Gaol need not be entered with the Prothonotary before Delivery; *aliter* against a Prisoner in the Fleet. *ibid.*
27. No need of an Affidavit on delivering a Declaration against a Prisoner, where there was an Affidavit upon the Writ, whereupon he was arrested. 330
28. When a Declaration is delivered against a Prisoner as a new Charge in order to hold him to Bail, the Declaration indorsed by the Prothonotary should be delivered, and not a Copy. 331
29. Plaintiff must declare in Prohibition if the Defendant insists on it. 356
30. Declaration on a Promissory Note by the Indorsee against the Drawer, no need to alledge Notice of the Indorsement. 358
31. No need to call for a Declaration in Replevin. 375

Demurrer. p. 152 to 157.

Leave to bring Money into Court on all the Counts in the Declaration except the last, and to Demur to that, denied.

256

Table of the Principal Matters.

Discontinuance. p. 157, 158.

Dower. p. 159, 160.

E

Ejectment. p. 161 to 178.

1. **D**Eclaration in Ejectment amended. Page 16
2. Amendment of Declaration in Ejectment, by altering the Day of the Demise after Issue joined, denied. 16
3. Term in Ejectment cannot be enlarged without Consent. 17
4. Bail in an Action for Mesne Profits. 62
5. Error on a Judgment after Verdict for the Defendant in Ejectment, no Bail necessary. 178
6. In Error on Ejectment, the Plaintiff in Error may give Bail, and need not himself enter into the Recognizance. 179, 180
7. Casual Ejector can't bring Error. 181
8. Not usual to grant a new Trial in Ejectment, where a Verdict was for the Plaintiff; *aliter* if for the Defendant. 408

Error.

The INDEX: Or,

Error. p. 178 to 198.

1. Warrant of Attorney amended after Error brought, and *Certiorari* returned. Page 25
2. Debt on a Judgment after Error brought, the Plaintiff may proceed to Judgment, but not to Execution till Error determined. 55
3. Action upon a Recognizance of Bail cannot be brought pending, a Writ of Error. 82, 83
4. Judgment on a Non-Pros at Trial, signed after the Plaintiff's Death, who died before the Day in Bank, must be reversed by Writ of Error. 238
5. Judgment not to be set aside on Motion after Error brought. 241
6. Leave to execute a new Writ of Inquiry after Error brought. 449

Escape. p. 199 to 204.

Essoin. p. 204 to 206.

Evidence. p. 206, 207.

1. Where Words import a general Charge of Felony, the Truth of them cannot be given in Evidence in Mitigation of Damages, where a particular Charge it may. 383

Table of the Principal Matters.

2. Register of the Ecclesiastical Court Subpoena'd, not obliged to produce a Will, unless Ordered by Rule of Court.

Page 434

Exception.

1. Exception to Bail must be marked on the Bail-Piece. 77
2. Exception in Vacation-time, whether the Defendant has four Days in the next Term to justify. 78
3. Plaintiff not bound to except to additional Bail, the Defendant must get 'em justified within the four Days. 81

Execution. p. 208 to 215.

1. Execution executed not to be amended. 24
2. *Ca. Sa.* executed, amended. 25
3. Debt on a Judgment after Error brought, the Plaintiff may proceed to Judgment, but not to Execution till Error determined. 55
4. Debt on a Judgment pending a Writ of Error, the Plaintiff may proceed to Judgment but not to Execution till Error determined. 182
5. May take out Execution if the Defendant does not apply to have it stayed. 183, 186
6. Judgment signed after Return of Writ of Error was out, Record not removed, and Execution regular. 186,

188, 192, 193

The INDEX: Or,

7. After Return of the Writ of Error was out, the Plaintiff signs Judgment and takes out Execution, regular, tho' Bail on the Writ of Error. *Page* 187
8. Execution pending Writ of Error. 189
9. Defendant charged in Execution, notwithstanding a Writ of Error. 194
10. Writ of Error in the Name of one Defendant in a Joint Action, Leave to take out Execution against the other Defendants. 194
11. Error abated by the Death of the Chief Justice, Leave to take out Execution. 195, 197
12. Not to be taken out without Leave. 196
13. Prisoner discharged for want of Plaintiff's proceeding to Execution is totally discharged, and can't afterwards be taken in Execution; *aliter* if discharged for not proceeding to Judgment. 333
14. Prisoner charged in Execution, tho' intitled to be discharged, he not having lodged his Superfedeas till after *Habeas Corpus ad Satisfaciendum*. 334
15. Defendant by Accident not charged in Execution in two Terms, no Superfedeas. 335
16. Execution returnable on a general Return instead of a Day certain. 439

Executors.

Table of the Principal Matters.

Executors.

1. Plea in Abatement, that there is another Executor, should have an Affidavit annexed. *Page 4*
2. Bail-Bond may be sued by the Executor of the Assignee. *168*
3. Executor not to be allowed Costs of Process sued out by the Testator. *113*
4. Debt by Executor for Rent in his own Time, Verdict against him, whether he shall pay Costs. *114*
5. Costs against an Executrix on a Non-Pros for Default of a Replication. *ibid.*
6. Where Executrix shall pay Costs of a Non-Pros at Trial on the Stat. of *Hue and Cry.* *115*
7. Executor Non-suited at Trial on an *Indebitatus Assumpsit* for Money received after the Testator's Death, shall pay Costs. *116*
8. Executor intitled to Costs that were payable to the Testator by Rule of Court. *ibid.*
9. Declaration against an Executor in the *debet & detinet*, good after Verdict. *139*
10. Declaration by an Executor in the *debet & detinet* good after Verdict. *140*
11. Leave to plead *Plene Administravit* after regular Judgment set aside. *234, 236*

The INDEX: Or,

12. Defendant, an Executor not allowed to bring Money into Court. *Page* 249
13. Allowed, consenting not to take it out again. 249, 250
14. Money brought into Court, shall not be paid back to the Defendant's Executor. 252
15. Case by Executor for Rent received by the Defendant, which was due to the Testator in his Life-time, the Defendant cannot set off a Debt which was due from the Testator. 268
16. Leave to withdraw a special *Plene administravit*, and plead *Plene administravit* generally. 304
17. Process against two Defendant's Executors, both must be served. 351

F

Fieri Facias.

1. **F**IERI *facias* executed, not to be amended. 24 *sed vide* p. 25.
2. The Words *Testatum, &c.* needless. 210
3. *Fieri facias* into a Foreign County regular, tho' the Words *Testatum, &c.* were omitted. 212

Fine.

Leave to amend a Fine denied, the Affidavit being taken before the Attorney who made the Application. 13

Habeas

Table of the Principal Matters.

H

Habeas Corpora.

1. **H**ABEAS Corpora, whether amendable. Page 22
2. Twenty four Jurors returned on the *Venire facias*, and forty eight on the *Habeas Corpora*, Verdict set aside. 416

Habeas Corpus. p. 216 to 221.

On a *Habeas Corpus* Defendant not obliged to put in Bail till served with a Judge's Order. 52

Heir.

Bail in Error by an Heir at Law on a Judgment by *Nil dicit*. 179

Homine replegiando. p. 221 to 224.

Hundred.

A Hundred intituled to an Action of Escape. 203

I

Impar lance. p. 225.

1. **W**HEN the Defendant pleads in Abatement in the subsequent Term, a Special Imparlance must be procured within the first four Days. 1
2. When

The INDEX: Or,

2. When the Plaintiff amends his Declaration and pays Costs, the Defendant shall not have an Imparance. *Page* 18
3. After Imparance only four Days to plead in a Country Cause. 288
4. Venue may be changed notwithstanding an Order for an Imparance. 425

Infant.

1. Plea of Infancy to have an Affidavit annexed. 5
2. Plea of Infancy by an Attorney refused to be set aside. 9
3. *Prochein amy* liable to Costs. 102
4. An Infant Lessor of the Plaintiff in Ejectment shall not give Security for Costs. 162
5. Bail by Guardian for an Infant in *Homine replegiando*. 224

Informers. p. 226.

Inquiry. p. 442 to 451.

1. The Award of a Writ of Inquiry amended. 24
2. Notice of Executing a Writ of Inquiry must be delivered to the Defendant when his Attorney can't be found. 126, 276
3. Notice of Inquiry for such an Hour, or as soon after as the Sheriff could attend, bad. 134
4. Notice

Table of the Principal Matters.

4. Notice must be given of a Writ of Inquiry in Dower. *Page* 159
5. Writ of Inquiry on Bill returnable on a general Return, is Error, and not Irregularity. 439

Interest.

1. Interest on a Promissory Note to be allowed from the Time of the Demand proved; if for Money lent, from the Date of the Note. 357
2. Interest on a Promissory Note to be allowed from the Time the Note is payable to the Time of the Return of the Writ. *ibid.*

Interrogatories.

Plaintiff in *Quare Impedit* examined on Interrogatories touching Secret Trusts for Papists. 359

Irregularities.

1. Irregularity in entering Appearance too late to be complained of after Judgment. 33
2. Irregularity in delivering Declaration too late to be complained of after Inquiry executed, or on the Day before it is to be executed. 127
3. Irregularity in a *Non-Pros* too late to be complained of after Judgment in an Action upon the *Non Pros*. 139

The INDEX: Or, T

4. Irregularity in delivering Demurrer Books, when to be complained of, Page 152
5. Judgment set aside for Irregularity after Inquiry executed. 237
6. Motion to set aside a Judgment for Irregularity, must be two Days before Inquiry executed. 242
7. Insufficient Notice in Process may be complained of at any Time before Judgment. 348
8. Irregularity in the Service of Process may be complained of at any Time before Interlocutory Judgment. 355

Issue. p. 227 to 232.

1. Confessing Lease, Entry and Ouster at the Trial will not preclude the Plaintiff from taking Advantage of a Variance between the Issue delivered and the Record of *Nisi Prius*. 169, 170
2. Variance between the Issue delivered and the Record of *Nisi Prius*. 414

Judgment. p. 233 to 245.

1. Judgment on a Warrant of Attorney by a Prisoner set aside, an Attorney not being present at the executing the Warrant of Attorney. 339
2. If an Attorney, or a Practicer as such, on Behalf of either be present, it is sufficient. 340
3. An

Table of the Principal Matters.

3. An Attorney's Clerk only present not sufficient. Page 340
4. If the Defendant be an Attorney, it is not necessary to have another Attorney present. 341
5. *Scire facias* where the Plaintiff died after Inquiry executed and before final Judgment. 376
6. Judgment of above a Year's standing, must be revived by *Scire facias*, tho' the Plaintiff was delayed by an Injunction out of Chancery. 377

Jurata,

Jurata amendable, 22

Jurisdiction. p. 245, 246.

Jury. p. 247, 248.

1. Costs of a Special Jury (except the striking) allowed. 106
2. Verdict given by Ballot set aside 409
3. Twenty four Jurors returned on the *Venire facias*, and forty eight on the *Habeas Corpora*, Verdict set aside. 416

Justification.

Verdict for the Defendant, on a bad Justification confessing the Trespass, set aside, and Judgment entered for the Plaintiff. 240

Demo.

The INDEX: Or,

M

Memorandum.

IN the Memorandum of a Declaration against an Attorney, the Nature of the Action need not be set forth. *Page 35*

Misnomer.

Misnomer must be pleaded in Abatement, and cannot be taken Advantage of in Arrest of Judgment. 7

Money, &c. brought into Court. p. 249 to 263.

1. On a Plea of Tender the Money must be brought into Court. 239
2. Money not to be brought into Court after regular Judgment set aside. 289
3. Leave to bring Money into Court, and plead *Non Assumpsit* to the first Count, and *Non Assumpsit i fra sex Annos* to the rest of the Declaration. 310
4. Rule to plead double after Money brought into Court, discharged. 317

Motions. p. 263 to 265.

1. Motion for an Attachment on the last Day of a Term, 104

2. No

Table of the Principal Matters.

2. No Motion in Arrest of Judgment on the last Day of a Term without Notice. *Page 238*
3. Motion to put off a Trial must be made two Days before the Day of Trial. *399, 400*
4. Motion for a new Trial after Motion in Arrest of Judgment. *409*
5. No Motion for a new Trial after the first four Days. *410, 411*
6. Motion to change the Venue too late after Plea, Time to plead, or Summons for Time to plead. *423 to 426*
7. Motion on the last Day of a Term to change the Venue too late. *426*
8. Motion to change the Venue on the last Day of the Term received. *427*
9. Motion to change the Venue on the last Day but one of the Term received. *ibid.*
10. No Motion to set aside a Verdict after the first four Days. *432*

Mutual Debts. p. 265 to 268.

Notice to set off a Debt at Trial not amendable. *21*

N

Ne Recipiatur.

COSTS for not going to Trial, tho' the Defendant had entered a *Ne recipiatur.* *406*

Non

The INDEX: Or,

Non Pros.

1. Costs against an Executrix on a *Non Pros*, for want of a Replication. Page 114
2. Administrator Nonsuited on Trial in Trover paid Costs, the Conversion being after Intestate's Death. 115
3. Costs paid by Executrix on a Nonsuit at Trial upon the Statute of Hue and Cry. *ibid.*
4. Executor Nonsuited at Trial on an *Indebitatus Assumpsit* for Money received after the Testator's Death, paid Costs. 116
5. Administrator Nonsuited in Prohibition brought by himself paid no Costs. 118
6. Plaintiff Nonsuited at Trial on a *Homine replegiando*, the Defendant shall have Costs. 223
7. Plaintiff can't be Non-prossed for not declaring after Outlawry reversed, 271

Notice. p. 269.

1. Notice to set off a Debt at Trial, not amendable. 21
2. Two Days Notice of justifying Bail. 80
3. Notice of Trial or of executing a Writ of Inquiry, must be delivered to the Defendant himself, or left at his House

Table of the Principal Matters.

House when his Attorney cannot be found, and not left at the Office.

Page 126, 276

4. When the Plaintiff appears for the Defendant, Notice must be given of the Declaration, though the Defendant be an Attorney. 128
5. Defendant's Place of Residence being in *Dorchester*, but lodging in *Bishopgate-street*, and being served with Process, Notice of the Declaration may be left at his Lodging, tho' he be then in the Country, and he shall plead in four Days. 129
6. Notice to the Defendant's Attorney of a Declaration being left in the Office, must be in Writing. 130
7. Notice of a Declaration must be given before Rule to plead. 131
8. Must set forth the Nature of the Action. *ibid.*
9. Need only mention the Nature of the Action. 133
10. Notice of a Declaration for Goods sold and delivered, tho' there was a Count for Money, lent good. 132
11. Notice of a Declaration without a Date, bad. 134
12. Declaration with Notice to plead in four Days, when the Defendant had eight Days, bad. 135

13. Decla-

The INDEX: Or,

13. Declaration only well delivered from
Time of Notice. Page 122, 135
14. Notice of Inquiry for such an Hour,
or as soon after as the Sheriff could
attend, bad. 134
15. Notice must be given of a Writ of
Inquiry in Dower. 159
16. Declaration in Ejectment of *Trinity*
Term, with Notice to appear in *Hi-*
lary Term. 163
17. Notice to appear in Process must be
for the Appearance Day. 345
18. Must be for the *Essoin-Day*. 346
19. Tho' the *Essoin-Day* be a *Sunday*.
346
20. Notice for the *Monday* wrong. 347
21. Notice to appear on the 20th *Oct.*
not saying next, bad. 347
22. Insufficient Notice on Process, may
be complained of at any Time before
Judgment. 348
23. Notice different from the Process as
to the Defendant's Name. 348
24. Notice must be given on serving a
Copy of Process, though the Writ be
Special, and the Debt above 10*l*. 349
25. If the Plaintiff does not file his *Re. fa.*
lo. at the Return, he must give Notice
of filing it. 370
26. Notice must be given of executing a
Writ of *Scire fieri* Inquiry. 379

Table of the Principal Matters.

27. Eight Days Notice of Trial sufficient, the Defendant an Attorney having Chambers in *Clifford's Inn*, and a House above 40 Miles from *London*.

Page 387

28. Fourteen Days Notice of Trial, tho' Defendant in Town when Arrested, and Notice of Trial given. 387

29. Fourteen Days Notice of Trial, the Defendant living in *Ireland*. 388

30. On Trial by Proviso the Defendant must give 14 Days Notice of Trial, if the Plaintiff would have been bound to give the same Notice. 388

31. Short Notice of Trial, what. 390

32. Where a Term's Notice of Trial, it must be given before the *Essoin-Day* of the Term. 391

33. Notice of Trial a Proceeding within the Year. *ibid.*

34. Whether a whole Term's Notice should not be given where there have been no Proceedings for three Terms. 392

35. Notice of Trial may be countermanded, though the Record be made a *Remanet*. 393

36. Countermand of Notice of Trial may be given in the Country two Days before the Commission Day. *ibid.*

37. Notice

The INDEX: Or,

37. Notice of Trial countermanded and continued in the same Notice, contradictory, and Verdict set aside. *Page*
394
38. Notice of Trial for the *Monday* Countermanded on the *Saturday*, good. 395
39. Notice of Trial can be continued but once. 396
40. Notice of Trial to the Defendant, when his Attorney is known, is bad. *ibid.*
41. Notice of Inquiry given to the Defendant, when his Attorney is known, bad. 442
42. Notice of Inquiry in a Joint Action should be given to both Defendants. 443
43. Notice of executing a Writ of Inquiry may be given on the Issue of *Nul tiel Record*. *ibid.*
44. A Term's Notice of executing a Writ of Inquiry, when no Proceedings for a Year after Interlocutory Judgment. 444
45. Short Notice of executing a Writ of Inquiry, should be at least two Days Notice. *ibid.*
46. Notice of Inquiry between ten and two uncertain. 445
- 47 Should be confined to the Compass of two Hours. 445

Table of the Principal Matters.

48. Notice of Inquiry for eleven good, if executed before twelve. *Page* 446
49. Notice of Inquiry incertain as to Time and Place. *ibid.*
50. Notice of Inquiry at *Westminster* generally, bad. 447
51. Notice of executing a Writ of Inquiry at the three *Tons* in *Brook-street, Middlesex*, incertain, and Writ of Inquiry set aside. *ibid.*
52. Costs for not executing a Writ of Inquiry pursuant to Notice. 448

Nul tiel Record.

1. On a Replication of *Nul tiel* Record in the same Court, there is a complete Issue, and no need of a Rejoinder. 227, 228
2. Notice of executing a Writ of Inquiry may be given on the Issue of *Nul tiel* Record. 443

O

Order. p. 269.

1. On a Judge's Order for Time to plead till *Monday*, Judgment can't be signed till the *Tuesday* in the Afternoon. 287
2. When the Defendant is bound to plead by a Judge's Order, no Occasion for a Rule to plead. 290, 291

K k

Original.

The INDEX: Or,

Original.

1. Original, not a Process to be served on Defendant within the late Act. Page 342
2. An Attorney Executor suable by Original, and not by Bill. 34
3. Serjeant at Law suable by Original, and not by Bill. 380

Outlawry. p. 270 to 275.

1. After Error brought the Plaintiff can't proceed to Outlaw the Defendant on the Judgment. 184
2. Prisoner in Custody on a *Capias Ut legatum*, discharged on the Insolvent Debtors Act. 339

Oyer. p. 275 to 278.

1. Like Time to plead after Oyer given as when demanded. 28, 300, 301
2. On giving Oyer can't sign Judgment for not paying for the Copies, but may refuse to deliver them. 29
3. Demand of Oyer to be in Writing. 280
4. Oyer to be demanded before the Rule to plead is out. 299
5. If Oyer be demanded after the Rule to plead is out, the Plaintiff need not give it, but if he does, he cannot sign Judgment. Judg.

Table of the Principal Matters.

Judgment till the next Day in the
Afternoon. *Page 300*

6. If the Defendant pleads a Deed with
a *Profert*, and does not give Oyer
within a reasonable Time, the Plain-
tiff may sign Judgment without ap-
plying to the Court for Leave.

301

P

Papists.

PLaintiff in a *Quare Impedit* examin-
ed on Interrogatories touching Se-
cret Trusts for Papists. *359*

Parcatur.

No Parcatur to be entered for the fu-
ture. *233*

Pauper. p. 279.

Defendant a *Pauper* obliged to pay Costs
for not going to Trial pursuant to
Notice by Proviso. *405*

Plea. p. 280 to 307.

1. Plea in Abatement of a subsequent
Term to be pleaded in the first four
Days, and a Special Imparance to be
procured within that Time. *1*

The INDEX: Or,

2. Antient Demesne not to be pleaded without Leave of the Court, and an Affidavit that the Lands are Antient Demesne. *Page 2*
3. Antient Demesne to be pleaded within the first four Days of the Term. *ibid.*
4. Within what Time to plead in Abatement. *3*
5. Plea in Abatement after the four Days, the Declaration not being well delivered. *ibid.*
6. Plea in Abatement without an Affidavit, Judgment signed. *4*
7. Plea of Infancy to have an Affidavit annexed. *5*
8. The Want of Addition pleaded in Abatement without an Affidavit. *ibid.*
9. Affidavit of the Truth of a Plea in Abatement, made by the Defendant's Attorney, held sufficient. *6*
10. The Plaintiff shall pay no Costs on confessing a Plea in Abatement. *ibid.*
11. On a Plea in Abatement, the Plaintiff may confess the Plea, and enter a *Cassetur breve* without applying to the Court, or paying Costs. *ibid.*
12. Misnomer must be pleaded in Abatement, and cannot be taken Advantage of in Arrest of Judgment. *7*

Table of the Principal Matters.

13. An Attorney forejudged sued by Bill
pleaded in Abatement that he is no
Attorney. Page 8
14. Plea of Infancy by an Attorney re-
fused to be set aside. 9
15. When the Plaintiff amends his De-
claration and pays Costs, the Defendant
shall not have an Imparlance. 18
16. Plea in Abatement not amendable. 21
17. When Plaintiff not bound to give a
new Rule to plead. 28
18. Like Time to plead after Oyer given,
as when demanded. 28, 300, 301
19. On giving Oyer can't sign Judgment
for not paying for the Copies, but may
refuse to deliver them. 29
20. Defendant's Place of Residence being
in *Dorchester*, but he lodging in *Bi-
shopsgate-street*, and being served with
Process, Notice of the Declaration
may be left at his Lodging, tho' he
be then in the Country, and he shall
plead in four Days. 129
21. Notice of the Declaration must be
given before Rule to plead. 131
22. Declaration delivered with Notice to
plead in four Days, when the Defen-
dant had eight Days, bad. 135
23. Leave to wave a Demurrer, and plead
the general Issue, denied, the Plaintiff
having been delayed a Trial. 153

The INDEX: Or,

24. Two Defendants by the same Attorney deliver two separate Pleas of *Non Cul*, they must be entered separately in the Issue. Page 231
25. Leave to plead *Plene Administravit* after regular Judgment set aside. 234, 236
26. Judgment set aside on Payment of Costs, must be on pleading the general Issue. 235
27. On a Plea of Tender, the Money must be brought into Court. 239
28. Verdict for the Defendant on a bad Justification, confessing the Trespass set aside, and Judgment entered for the Plaintiff. 240
29. Leave to plead double, and bring Money into Court, denied. 260
30. Money to be brought into Court should be brought in before Plea delivered. 261
31. Leave to withdraw the general Issue, plead the same *de novo*, and pay Money into Court. 262
32. Too late to demand Oyer after Rule to plead. 278
33. Oyer after Rule to plead denied. *ibid.*
34. Leave to plead treble after Time to plead, pleading an issuable Plea. 316
35. Can't add to a Plea after Replication or Demurrer. 317

36. After

Table of the Principal Matters.

36. After Plea too late to move to change the Venue. *Page 423*
37. Defendant's pleading after Rule *Nisi*, to change the Venue, no Waiver of the Rule. *ibid.*
38. Venue not to be changed after Time to plead. 424
39. May notwithstanding an Impar lance. 425
40. Not after a Summons for Time to plead. 425, 426

Double Pleas. p. 307 to 321.

Pleadings. p. 321, 322.

Pledges. p. 323.

Posse. p. 324.

Prisoner. p. 325 to 341.

1. Defendant surrendered by his Bail, and discharged by Superseas must give Bail *de novo* on an Action of Debt on the Judgment. 56. *sed vide reg. Hil. 8 Geo. 2.*
2. Prisoner brought up by *Habeas Corpus*, not to be received before the Return. 218
3. May be brought in at any Time between the Return and Appearance Day. *ibid.*

The INDEX: Or,

4. Prisoner brought up by *Habeas Corpus* to be remanded, unless he pays the Sheriff his Fees. Page 219
5. Attachment against the Sheriff for not bringing up a Prisoner pursuant to a *Habeas Corpus* on Tender of 1s. per Mile. *ibid.*

Privilege. p. 341.

1. A Menial Servant to an Ambassador not intitled to Privilege, a domestic Servant is. 14
2. An Attorney arrested on an Attachment, whilst attending his Clients Business in *Westminster Hall*, discharged. 40
3. An Attorney returning from an Attendance on a Prothonotary arrested on a *Ca. Sa.* out of the King's Bench. *ibid.*
4. An Attorney taken in Execution, whilst attending the Execution of a Writ of Inquiry discharged. 41
5. Conusance not to be allowed against the Privilege of an Attorney. 97, 99

Process. p. 342 to 355.

No Attorney's Name to the Copy of the Process. 440

Prochein Amy.

Prochein Amy liable to Costs. 102
Pro-

Table of the Principal Matters.

Prohibition. p. 356.

Administrator Nonsuited in Prohibition
brought by himself, paid no Costs.

Page 118

Promissory Notes. p. 357, 358.

1. Venue not to be changed on a Promissory Note. 417, 418.
2. Affidavit that there is a Real Note 417

Provifo.

1. Defendant may try the Cause by Provifo before a whole Term has intervened. 397
2. On Trial by Provifo the Defendant must give fourteen Days Notice of Trial, if the Plaintiff ought to have given the like Notice. 388

Q

Quakers.

1. **A**ffirmation of a Quaker not a sufficient ground for an Attachment. 34
2. Quaker fined for refusing to be Sworn on a Jury. 247

Quare Impedit. p. 359 to 369.

Recog:

The INDEX: Or,

R

Recognizance.

1. **R**ecognizance in Account. *Page 9*
2. Breach in Declaration on a Recognizance of a Bail ill assigned. 19
2. No Action of Debt on a Recognizance of Bail pending a Writ of Error. 82, 83
3. If Action of Debt be brought on a Recognizance of Bail, the Writ should be served four Days before the Return. 83
4. Recognizance of Bail in *Homine replegiando*. 222, 224

Recordari facias Loquelam. p. 370, 371.

Recoveries. p. 371 to 374.

Reference. See Award.

1. Costs of a Reference by Consent not to be allowed. 103
2. No Costs after Reference at the Assizes. 104

Rent.

The Landlord shall not be paid a Year's Rent out of Goods taken on a *Capias Utlegatum*. 272

Re-

Table of the Principal Matters.

Repleader. p. 374.

Replevin. p. 375. See *Homine replegiando*.

1. Conusance in Replevin claimed by the University of *Cambridge*. Page 92
2. If the Plaintiff does not file his *Re. fa. lo.* at the Return, he must give Notice of filing it. 370
3. Proceedings on a *Re. fa. lo.* when brought by Plaintiff or Defendant. 371

Rescue. p. 375.

Return' Habend'.

Writ of second Deliverance a *Superfedeas* to a *Return' Habend'*. 375

S

Scandalum Magnatum.

VENUE not to be changed in *Scandalum Magnatum*. 417

Scire facias. p. 376 to 379.

Scire fieri Inquiry. p. 379.

Serjeants. 380.

Venue may be changed tho' the Plaintiff be a Serjeant at Law, if he sues by Common *Capias*. 420

Second

The INDEX: Or,

Second Deliverance.

Writ of Second Deliverance, a *Superseas* to a *Return' Habend'*. Page 375

Sheriffs. p. 381.

1. Sheriff cannot take Bail on Attachment. 53, 54, 325
2. Bail being justified, Peremptory Rule against the Sheriff discharged, tho' the Plaintiff had been delayed trying the Cause. 71
3. Bail when taken by the Sheriff good, afterwards insolvent, Sheriff liable. 72
4. Attachment against Sheriff for not bringing up a Prisoner pursuant to a *Habeas Corpus* on Tender of 1 s. per Mile. 219

Slander. p. 382 to 384.

1. Full Costs in Slander, though Damages found under 40 s. Special Damage being laid. 111
2. No more Costs than Damages in Slander, tho' a Justification pleaded, *ibid.*
3. Trial put off in Slander. 403, 404

Soldiers.

1. Soldier held to Bail on Debt on a Judgment for above 10 l. tho' Original Debt under 10 l. 59, 60
2. *Aliter*

Table of the Principal Matters.

2. *Aliter.* Page 61.
3. Out-Pensioner of *Chelsea College* held to Bail, not being a Soldier in actual Service. 59, 60

Summons. p. 385.

1. Judgment signed tho' Summons for 'Time to plead was not discharged. 291
2. Summons for Time to plead after Rule out, no Stay of Proceedings. 292

Supersedeas.

- A Writ of Second Deliverance, a *Supersedeas* to a *Return' Habend'*. 375

Surrender.

1. Bail cannot Surrender the Principal after the Appearance Day of the Return of the Writ, when an Action is brought on the Recognizance. 20
2. On putting in one Bail the Defendant cannot Surrender. 84
3. Can't Surrender till Bail is complete. 85
4. Debt against Bail, Render on the Appearance Day after the Rising of the Court, bad. 86
5. Time given to Surrender. *ibid.*
6. Render at a Judge's Chamber vacated, for not paying the Fees. 87

Tender.

The INDEX: Or,

T

Tender.

1. **O**N a Plea of Tender, the Money must be brought into Court. *Page 239*
2. On a Plea of Tender, Money brought into the wrong Office. *298*
3. A Plea of Tender not a Plea within the Meaning of a Judge's Order giving Time to plead, pleading an issuable Plea. *ibid.*
4. A Plea of Tender can't be pleaded after Time to plead. *299*
5. Application to plead a Tender as of the last Term, may be made within the first four Days of the Term. *ibid.*

Testatum Capias.

1. Bail on a *Testatum Capias*. *52*
2. Words *Testatum, &c.* in an Execution needless. *210*

Time. p. 386.

Trespas. p. 386.

1. Bail in Trespas for entering the Plaintiff's Hop-Ground, and taking away his Hop-Poles. *64*

Table of the Principal Matters.

2. Trespass for breaking a House, the Windows, &c. no Costs *de incremento*.
Page 107
3. Trespass on a Frechold, no Costs *de incremento* without Certificate. *ibid.*
4. In Trespass when a Damage is done to Personal Chattels, full Costs, tho' Damage found under 40s. 108
5. Trespass for breaking a Cellar Door, no more Costs than Damages. 109
6. No more Costs than Damages in Trespass, notwithstanding the new Assignment. 110
7. Jury may give what Costs they please, tho' Damage under 40s. 110, 112

Trial. p. 387 to 411.

1. Notice of Trial if the Defendant's Attorney can't be found, must be delivered to the Defendant himself. 126, 276
2. No New Trial after Motion in Arrest of Judgment. 241
3. Venue not to be changed when the Plaintiff may be delayed trying the Cause. 428

Trover. p. 412.

Administrator Nonsuited at Trial in Trover, the Possession, Loss and Trover in Intestate's Time, the Conversion in the Administrator's, he paid Costs. 115

Ua-

The INDEX: Or,

Variance. p. 413, 414.

1. Confessing Lease, Entry and Ouster at Trial, will not preclude the Defendant from taking Advantage of a Variance between the Issue and *Nisi Prius* Record. Page 169, 170
2. Variance between Issue delivered and Record of *Nisi Prius* in the Award of the *Venire*, not material. 229

Venire facias. p. 414 to 416.

Venue. p. 417 to 431.

1. Declaration amended by altering the Venue after Issue joined. 20
2. Venue can't be changed after Defendant bound to plead the general Issue, and take short Notice of Trial. 70

Verdict. p. 431, 432.

1. Verdict for the Defendant, on a bad Justification confessing the Trespass, set aside, and Judgment for the Plaintiff. 240
2. When a Verdict is given as a Security, Judgment is not to be entered without Leave of the Court. 245
3. Verdict given by Ballot set aside. 409

Table of the Principal Matters.

W

Wager of Law. p. 433.

Wales.

1. **E**jectment for Lands in *Wales*. Page 161
2. Motion for an Attachment against a *Welsh* Sheriff for not returning a Writ. 381

Warrant of Attorney.

1. Warrant of Attorney amended after Error brought and *Certiorari* returned. 25
2. Leave to file Warrant of Attorney after Error brought, denied. 197
3. Judgment entered upon an old Warrant of Attorney on an Affidavit, that the Defendant was alive in *Jamaica* three Months before. 244
4. Judgment entered on an old Warrant of Attorney upon an Affidavit of the Money being unpaid, made by a third Person, the Plaintiff being a Lunatic. *ibid.*
5. Warrant of Attorney by a Prisoner to confess a Judgment, no Attorney being present, Judgment set aside. 339

The INDEX, &c.

6. If an Attorney, or a Practicer as such, present on Behalf of either Side, it is sufficient. *Page* 340
7. Judgment on such a Warrant set aside, an Attorney's Clerk only being present. *ibid.*
8. The Presence of an Attorney not necessary if the Defendant be an Attorney. 341

Withernam. See *Homine replegiando*.

Witness. p. 434, 435.

1. Affidavit of the Want of a material Witness for putting off a Trial, must be made by the Defendant himself. 401
2. Of putting off a Trial for the Want of a material Witness. 402
3. Writ of Inquiry set aside because the Plaintiff was examined as a Witness. 450

Writ. p. 436 to 442. See Title *Inquiry*.

No need of fifteen Days between *Teste* and Return of *Scire facias*. 377

Writ of Inquiry. p. 442 to 451.
See Title *Inquiry*.

F I N I S,

Ex. R. W.